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TRANSCRIPT OF RECORD

Supreme Court of the United States.

OCTOBER TERM, 1959

No. 44

**LOCAL LODGE NO. 1424, ETC., ET AL.,
PETITIONERS,**

. vs. .

NATIONAL LABOR RELATIONS BOARD.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITION FOR CERTIORARI FILED MARCH 18, 1959

CERTIORARI GRANTED JUNE 22, 1959

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,257

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; AND INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, *Petitioners*.

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 14,324

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

BRYAN MANUFACTURING COMPANY, *Respondent*.

On Petition to Review and Set Aside, and on Petition
for Enforcement of, an Order of the National
Labor Relations Board

JOINT APPENDIX

(1)

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

1

BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

Case No. 7-CA-1303

In the Matter of:

BRYAN MANUFACTURING Co., *Respondent*,

and

MARYALICE MEAD, an Individual,

and

LOCAL 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL, and INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL, *Party to the Contract*

Case No. 7-CB-280

In the Matter of:

LOCAL 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL, and INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL, *Respondent*,

and

MARYALICE MEAD, an Individual

and

BRYAN MANUFACTURING Co., *Party to the Contract*

County Building;
Hillsdale, Michigan
Wednesday, November 2, 1955.

1(a)

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m..

BEFORE:

EARL S. BELLMAN, Trial Examiner.

APPEARANCES:

Mr. EMIL C. FARKAS, 314 East Jefferson Avenue, Detroit 26, Michigan, Counsel for the General Counsel.

Mr. FRANK L. GALLUCCI, Probst, Gallucci & O'Malley, Manufacturer's National Bank Building, Highland Park 3, Michigan, appearing on behalf of Bryan Manufacturing Company.

Mr. LOUIS P. POULTON, Grand Lodge Attorney, Machinists' Building, 9th Street and Mt. Vernon Place, Washington 1, D. C., appearing on behalf of International Association of Machinists and Local 1424 of the International Association of Machinists.

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Mr. Farkas: I will then ask the reporter at this time to mark for identification as General Counsel's Exhibit Number 1 a collective exhibit which contains the formal papers and documents relative to this proceeding.

(Thereupon, the documents above referred to were marked General Counsel's Exhibit No. 1 for identification.)

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Trial Examiner: Have you had an opportunity to examine these documents to your satisfaction?

Mr. Gallucci: Yes.

Mr. Poulton: I have no objection.

Trial Examiner: Do you have any objection to the receipt of the formal exhibits?

Mr. Gallucci: No. We have no objection.

Trial Examiner: The documents, as described and incorporated-

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ted in the collective exhibit, General Counsel's Exhibit Number 1, are hereby admitted in evidence.

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Mr. Farkas: All right, sir. I therefore move, on the basis of having given notice, that the Complaint issued on October 5, 1955 in Case Number 7-CA-1303 be amended as follows:

By supplementing paragraph 4 of the Complaint in Case Number 7-CA-1303, with the addition of the following new paragraph:

Respondent on or about August 30, 1955, entered into a collective bargaining agreement governing wages, hours and working conditions of its employees at its Reading and Hillsdale, Michigan plants, with said Local 1424, International Association of Machinists, AFL, at a time when the aforesaid union did not in fact represent a majority of the employees within the bargaining unit at its Reading and Hillsdale, Michigan plants, specified in the contract, to wit:

"All present and future employees of the Company at its Reading, Michigan (Plant Number 1), and Hillsdale,

Michigan (Plant Number 2), plants, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act."

That constitutes the motion to amend paragraph 4 of the Complaint in Case Number 7-CA-1303.

Trial Examiner: Let me ask a question or two, to be sure I understand it. The unit specification is identical, except

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it is a two-plant unit rather than a one-plant unit, is that correct?

Mr. Farkas: That is correct.

Trial Examiner: And the contract is between only the local and the respondent company?

Mr. Farkas: If my information is correct—

Trial Examiner: That is what I thought you said.

Mr. Farkas: Yes, that is so. That is what is alleged.

Trial Examiner: The allegation in the complaint as to the other contract had both the unions?

Mr. Farkas: That is correct, sir.

Trial Examiner: I just wanted to be sure I was following the amendment. Now, is that all as to the Complaint in Case Number 7-CA-1303?

Mr. Farkas: Yes, that constitutes the motion to amend that Complaint.

Trial Examiner: Do you have any other motion?

Mr. Farkas: Yes, I have a motion—or I should like to make an additional motion—to amend the Complaint in Case Number 7-CB-280, by supplementing paragraph Number 6 of the Complaint in Case Number 7-CB-280, by the addition of the following new paragraph:

On or about August 30, 1955, the Respondent entered into and thereafter retained in force and effect the collective

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bargaining agreement with the Company governing the rates of pay,

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wages, hours of employment and other conditions of employment of the following described unit of employees:

"All present and future employees of the Company at its Reading, Michigan (Plant Number 1), and Hillsdale, Michigan (Plant Number 2), plants, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act."

At the time—this is part of the motion to amend—at the time when the aforesaid collective bargaining agreement was entered into, the Respondent did not in fact represent a majority of the employees in the unit set forth above in the Company's Reading and Hillsdale, Michigan, plants.

That constitutes the end of the motion to amend Complaint Number 7-CB-280.

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Mr. Farkas: I think that should be further clarified by the insertion of the Local's number, because clearly what I intended to do was to move to amend with respect to the party entering into the contract, which was the Local only, speaking of the contract of August 30th.

Trial Examiner: So, in each of the at least two places where you used the term "respondent" what you now indicate is that you mean to say "Respondent Local Number 1424", is that correct?

Mr. Farkas: That is correct.

Trial Examiner: All right. This completes the motion to amend?

Mr. Farkas: The motion to amend.

Trial Examiner: The oral motion, and this is without prejudice to your offering in documentary form later the same thing as supplementary documentary material.

All right, now, do you have anything further to say in behalf of the motions to amend? Is there any opposition to these motions to amend?

Mr. Poulton: I have none.

Mr. Gallucci: No.

Trial Examiner: There appears to be no opposition, either to the Respondent Company or to the Respondent Unions; so I will grant this motion to amend, and I will grant it with the further qualification that if, by virtue of this amendment, any of the parties find that they are in any way surprised or need any additional time to prepare and make a showing to me which convinces me to that effect, I will certainly hear you on the matter.

The motions to amend are granted.

Mr. Poulton: At this point, Mr. Trial Examiner, I would like to amend the Respondent Local Lodge 1424's Answer in Case Number 7-CB-280, to have paragraph Number 6 also generally and specifically denied, each and every allegation and conclusion contained in the amended paragraph 6 of the Complaint.

Trial Examiner: The Answer, then, as it goes to the Respondent Local, will be amended. There is no objection, I suppose, to that motion to amend the Answer?

Mr. Farkas: No.

Trial Examiner: The motion is granted.

Mr. Gallucci: May I have the company make substan-

tially the same motion in regard to the amended Answer of paragraph 4?

Trial Examiner: In other words, you want to extend the denial in your present Answer to include the new material which has been added to paragraph 4 of the complaint?

Mr. Gallucci: That's right.

Trial Examiner: Any objection to that motion to amend the Respondent Company's Answer?

Mr. Farkas: No.

Trial Examiner: The motion is granted, and the Answer of the Respondent Company is so amended.

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Mr. Farkas: Mr. Examiner, I have written into each of these documents, each of these statements of the amendment supplementing the respective complaints, certain language to clarify the situation which we discussed on the record relative to the August 30th contract being entered into only by Lodge Number 1424.

In paragraph 2, which supplements the Complaint in Case Number 7-CB-280, I have inserted the words, after the word "Respondent", the words, "Lodge No. 1424, International Associa-

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tion of Machinists, AFL", thus indicating that it is the Local or Lodge Number 1424 only, which is embraced in that particular amendment.

Further down, the word "Respondent" is again mentioned, and I have inserted the words "the said Respondent". I am going to hand this to the respective counsel for their examination; and if they have any additional suggestions or points they care to bring up in connection

with that I will be glad to entertain them before submitting it finally.

Trial Examiner: Now, at the risk of seeming picayunish—I trust you won't feel that way about it—let me point out all the way through the Complaint the term "Local 1424" is used, rather than "Lodge", and now which is it and does it make any difference?

Mr. Farkas: With respect to the identity of the body, I believe it makes no difference. It is my understanding that the International Association of Machinists and its many local organizations refer to those locals as "lodges" rather than using the term "local". Isn't that correct?

Mr. Poulton: The reference is usually made, Mr. Trial Examiner, as "Local Lodge". That is the usual procedure.

Mr. Farkas: I will, after this is disposed of, I would be glad to make a general amendment.

Trial Examiner: If you are not going to amend the Complaint to have "Local Lodge" or "Lodge"—

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Mr. Farkas: I will do that.

Trial Examiner: And I would rather be consistent in the documentation of the thing, because that is the sort of thing which tends to confuse people. "Local" is perfectly all right with me, or "Lodge", or "Local Lodge". I just want consistency, and to reflect as accurately as possible what the documents and the evidence will show before we get through with the hearing.

Mr. Farkas: So that we name the organization properly—I think all of us like to have our names properly used—I would like to make an amendment following the Examiner's decision on the Exhibit, General Counsel's Exhibit Number 2.

Trial Examiner: Is there any objection to the receipt in evidence of General Counsel's Exhibit Number 2?

Mr. Poulton: May we go off the record for just one moment?

Trial Examiner: We will be off the record.

(Discussion off the record.)

Trial Examiner: We will be on the record. Will you indicate that you made a further modification, and then I will ask again if there are any objections.

Mr. Farkas: Yes. I have further modified the record with reference to Respondent's Union, namely, the Local, by identifying it—as I understand it to be properly identified—as "Local Lodge Number 1424, International Association of Machinists," and I have so identified it throughout that portion of

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the statement which has reference to Case Number 7-CB-280, the Complaint involving the Respondent labor organization.

Trial Examiner: That is spelled out as "Local Lodge N-o."—with the number "1424". As so amended, now, does anyone have any objections to this being received in evidence as General Counsel's Exhibit Number 2?

Mr. Poulton: I have no objection.

Trial Examiner: There appears to be no objection, and the document is submitted in evidence as General Counsel's Exhibit No. 2, being a written version of the amendments to the Complaint.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

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Mr. Farkas: I wish to call the Examiner's attention to the fact that for the purpose of establishing the matter

of jurisdiction in this proceeding, Board jurisdiction, the General Counsel will rely and does rely upon the allegations in the Complaint, specifically paragraphs 1, 2, and 3, and the admission in Respondent Company's Answer.

I should like to further make mention in this connection that while the Respondent Union alleged it had no information

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with respect to the commerce data, as pleaded, I would, nevertheless, request and ask the Respondent Union whether it would enter into a stipulation either to those facts or to the fact that if a responsible officer or representative of the Company were subpoenaed to testify, his testimony would be substantially what is alleged in Paragraphs 1, 2 and 3 of the Complaint.

Trial Examiner: The hearing will be in order. Have you had an opportunity to make your investigation?

Mr. Poulton: Yes, I have had an opportunity to ascertain

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whether the facts as to the commerce stated in the complaint are correct, and since the company informs me that they are, I will so stipulate the company is within commerce, and amend the Answer in Case Number 7-CB-280, as to the paragraph Number 1. We will admit the allegations contained therein, as to that paragraph.

As to Paragraph Number 2, we will admit the allegations contained therein.

As to Paragraph Number 3, we will admit the allegations contained therein.

As to Paragraph Number 4, we will admit the allegations contained therein.

Thus ends my amendment.

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Trial Examiner: Any objection to the Answer of the Respondent Union standing as amended, just as stated? There appears to be none, and the Answer is so amended to admit Paragraphs 1, 2, 3 and 4.

Mr. Farkas: The stipulation, with respect to the Respondent Union as a labor organization, is also admitted in the Answer, I take it, of the Respondent?

Mr. Poulton: Yes.

Trial Examiner: I might say there isn't any such allegation in the Complaint with respect to the company.

Mr. Farkas: That is right, and that is the reason why I am about to request the respondent company, through its counsel,

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to join in a stipulation that the International Association of Machinists, AF of L, and its Local Lodge No. 1424, are labor organizations within the meaning of the Act, and I trust they will so stipulate.

Mr. Gallucci: I have such knowledge on information and belief.

Mr. Farkas: Well, Mr. Examiner,—

Trial Examiner: You are not contesting it?

Mr. Gallucci: I am absolutely not.

Mr. Farkas: I will accept that. I think that's sufficient.

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Mr. Farkas: I call Mr. Westbrook to the stand under Rule 43-B.

Leslie J. Westbrook

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Farkas) Mr. Westbrook, what position do you hold with the Bryan Manufacturing Company? A. I am vice president of that company.

Q. And as vice president would you very briefly indicate your general authority as vice president. A. In the plant there?

Q. Yes. A. In production, I am in charge of the plant in production and the hiring, personnel.

Q. Are you in charge of that phase of the operations at the Hillsdale plant as well as the Reading plant?

A. Yes, sir.

Q. In the course of your administering your various duties are you in any way responsible for the labor relations policies of the company? A. Well, I am responsible. I either get advisory—I get

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advice from my attorney.

Q. Aside from any advice which you are required to obtain, do you as an individual, as vice president of the company, ever determine any policy affecting labor relations at the plant? A. No.

Q. You do not? A. Not without advice.

Q. Well, who in the plant does have that authority or power? A. I am not sure if I understand just what you mean.

Q. Is there some individual at the plant who is responsible for the industrial relations policies or labor relations policies or programs or problems affecting those matters? A. Well, I wouldn't say anyone, without I know about it. I would be the one to make the final decision if there is any problem that would come up.

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Q. (By Mr. Farkas) Do you now have a contract with any labor organization? A. The company has one with the AF of L.

Q. What is the full name of that labor organization?

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A. AF of L, Machinists. There is a local there.

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Q. (By Mr. Farkas) Were you in any way responsible for the negotiating of that contract, Mr. Westbrook?

A. No, sir.

Q. Who was? A. Mr. Adams is the one that signed the papers on that, and the attorney.

Q. Who is Mr. Adams? A. Mr. Adams was vice president at that time.

Q. When did you first learn there had been a contract signed with the International Association of Machinists?

A. Learned there had been one signed?

Q. That's correct. A. There had not been any signed until after negotiations.

Q. Well, when was that? A. The contract was signed after all the negotiations, and it was around August 17th, if I recall.

Q. The contract was signed August 17th, you say? A. The contract—the negotiations and everything was over, all of the meetings and everything—negotiations, before anything was signed.

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Q. Who participated in those meetings? A. Mr. Probst, Mr. Schwartzmiller, when he was up there during the negotiations.

Q. Were you there? A. I was there.

Q. When was the first meeting held, approximately?

A. First meeting? The meetings were in August, the 10th, or somewhere around there. I don't know the date.

Q. That was the date on which the first meeting was held to negotiate the contract? A. Those dates are a year ago. I don't recall the dates.

Q. Mr. Westbrook, do you have any kind of a document or any papers which might refresh your recollection as to when that occurred? A. I don't have, no.

Q. You don't know? A. I don't have.

Q. And you don't know when those negotiations took place? A. Not on the dates, no. Not that far back.

Q. Do you know the day on which the contract was signed? A. After the meeting and everything, all of the negotiations was over with, and everything, if I recall, it was around August 17th.

Q. If I said to you that your contract indicates on its face that it was executed on the 10th of August, would you say that

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was correct? A. No.

Q. It was not correct? A. It was not signed on that date, no. That was the date it went back retroactive.

Q. If I said to you that the contract itself reads, "That the parties hereto have set their hands and seal as of this date and the year first above written", would you say that was accurate? A. If that is what it says in the contract, but I don't remember it.

Q. Yet you say the contract indicates you set your hand and seal on that contract as of the date first written, and I say to you that that date first written was August 10th, and you say the contract was not signed until the the 17th? A. Yes, sir.

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Q. Even though the contract says it was signed on the 10th? A. It was retroactive, if I recall.

Q. And I am saying the contract says it was signed on the 10th. It doesn't say it was retroactive or effective as of the 10th. It says it was signed as of the 10th. A. That is over a year ago, and I have more plants than one. I don't recall the dates exactly.

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Q. (By Mr. Farkas) You say there were negotiations preliminary to the signing of this contract, is that right?

A. Yes.

Q. Where did those negotiations take place? A. Negotiations for the rates and all were in the Reading plant.

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Q. I say the negotiation of the contract. A. We had a preliminary contract that we were working on. I went to Detroit and worked with Mr. Probst and did a preliminary there, and any corrections we had, that we wanted to put in.

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Q. (By Mr. Farkas) Mr. Westbrook, isn't it a fact that a contract, a collective bargaining contract, recognizing the International Association of Machinists, was negotiated on August 10th, 1954, and signed by Mr. Adams as Vice President, and subsequently after that another supplemental agreement was executed and later incorporated into the original contract? A. That's right.

Q. (By Mr. Farkas) All right, now, I speak of the original contract which you have just testified was negotiated and signed on August 10, 1954, and signed by Mr.

Adams. I speak of that original contract. When did you first commence negotiations with respect to that contract?

A. We started negotiating after the 10th there, somewhere around the 17th, several of them.

Q. You say you started negotiating with respect to that original contract after August 10th? A. Not the contract. The wages, rates, and all.

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Q. All right, with respect to the original contract recognizing the Machinists as the collective bargaining representative of your employees, when did you first commence negotiations on that contract? A. The original?

Q. Yes. A. I don't recall the date, to be exact. That was back—we received the first notice from Mr. Schwartzmiller on that—it was around July 17th.

Q. The first notice of what? A. To have a meeting.

Q. How did that first notice come to you? A. By the mail.

Q. I beg your pardon? A. By the mail.

Q. What did he say? What was the letter? A. If I recall, they represented a majority of the people, and wanted to have a meeting.

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Q. Are you the plant manager? A. That's right.

Q. Did you reply to this? A. I turned it over to my attorneys. I called them and told them what they had on that and what to do, what their advice was.

Q. Had you ever seen Mr. Schwartzmiller prior to that time? A. No, sir.

Q. When was the first time you did see Mr. Schwartzmiller? A. I don't remember the date. It was when we were working on the proposals there, is the only time—

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the first time I ever seen him. I don't remember the date.

Q. Where was this? A. In Ohio.

Q. The first time you saw Mr. Schwartzmiller was where? A. In Ohio.

Q. That was when? A. I don't recall the dates.

Q. Well, what month would you put it in? A. It was in July.

Q. Did you see him prior to July 17th in Ohio? A. No.

Q. It must have been after July 17th? A. Yes.

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Q. Could it have been in August? A. I can't give you a date on that, sir. It was after they received that, is all I know. We had an appointment with him.

Q. In other words, you are telling me that the first time you saw Mr. Schwartzmiller was in Ohio, and it was sometime in the month of July? A. Around the first—the end of July or the first of August. I don't recall the date. It was immaterial at that time, what the date was.

Q. It was immaterial? A. Memorizing it was. I didn't memorize it.

Q. Where in Ohio did you see him? A. In Lancaster.

Q. I beg your pardon? A. Lancaster.

Q. What were the circumstances of your meeting him there or seeing him there? A. The attorneys wanted to meet him, on the proposal, the original proposal of the contract.

Q. Who was there? A. Mr. Probst and Mr. Schwartzmiller and myself.

Q. Mr. Probst, Mr. Schwartzmiller and yourself. And at that time you discussed negotiation of a contract? A. Proposal for the contract, what we wanted.

Q. Did you have any other meetings after that?

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A. I didn't have.

Q. That was the only meeting that you ever attended?

A. On the proposal, other than in Reading.

Q. When did you, thereafter, when did you first learn that the parties had reached an understanding? A. All parties you mean now?

Q. Well, I think you just testified, Mr. Schwartzmiller, Mr. Probst and you were essentially the parties who negotiated this contract.

Mr. Gallucci: I object to that.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Farkas) Was there anyone else present?

A. On the regular proposal now? Yes.

Q. I am not talking about proposals. I am talking about negotiating a contract. You fully understand what that means, Mr. Westbrook.

Mr. Gallucci: I object to that.

Trial Examiner: Sustain the objection. Restate your question. You were first talking about this proposal. I don't think you can broaden it that easily.

Q. (By Mr. Farkas) Mr. Westbrook, where did you work before you worked at Bryan Manufacturing Company?

Mr. Gallucci: Mr. Trial Examiner, may I interrupt just a moment here? I would very deeply appreciate it, and I think we could get to the facts much easier, if you, as the Trial

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Examiner, would explain to Mr. Westbrook the legal distinctions between execution of a contract, entering into an agreement, or a proposal, and words that he is using which have a definite legal meaning in the record, which Mr. Westbrook as a layman may not be familiar with.

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Trial Examiner: Just a minute. Just a minute. What does the term "signing a contract" mean to you, sir?

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The Witness: When you negotiate a contract and it is signed, all negotiations are over with.

Trial Examiner: Who signs the contract when it is signed?

The Witness: In this case here Mr. Adams signed as vice president at that time. I was not. Whoever was in charge of the plant, appointed.

Trial Examiner: Did anyone else sign it besides Mr. Adams?

The Witness: The firm contract?

Trial Examiner: Who was this contract between? What parties? You understand the term "parties", "parties to a contract"?

The Witness: I understand it to be the Union and Management.

Trial Examiner: All right, the Management was the Company in this case that you represented, wasn't it?

The Witness: He represented them at that time.

Trial Examiner: And the union; and those were the parties to the contract, is that right? And the contract was signed with someone representing both of those parties, their signature on it? Is that what you understand by "signing of the contract"?

The Witness: That's right.

Trial Examiner: With that background, understanding the contract is signed with the parties who were signing, put both of their signatures on it, when did you learn that that contract

was signed?—

The Witness: Around August 10th, if I recall. I don't have the exact date. I will have to figure it as close as I can.

Q. (By Mr. Farkas) And just exactly how did you learn that? A. The first—when they called the first meeting up there. Then.

Q. When who called what meeting? A. When they got together for negotiations, Adams, Probst.

Q. Mr. Westbrook, the Examiner has just gone over some language with respect to whether or not you understand it. I think that you finally did indicate that you understood what it meant, to sign a contract; what the term "signing a contract" meant. I believe that you indicated you understood when the names were affixed to the contract, after the negotiations, and an understanding had been reached, that that was signing the contract. Is that correct? A. That's right.

Q. Now, I am asking you when—strike that. How, how did you first learn that the names of the responsible individuals from the Company and the Union had affixed their names to that contract? How did you find that out? A. How? I was there at the meeting, at the office there.

Q. At what meeting? A. The first meeting back in the office, when we started

negotiations.

Q. You testified previously that those first negotiations were in the latter part of July.

Mr. Gallucci: I object to that, you Honor. He did not testify to that.

Trial Examiner: Sustain the objection.

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Q. (By Mr. Farkas) When were those first negotiations?

A. The first negotiations started on August 10th.

Q. The first negotiations started on August 10th, and the contract was signed on August 10th? A. Not negotiations for a contract. Negotiations for rates and working conditions. The contract, the proposal is what I was referring to there. Your contract—there was no contract signed until after all negotiations, as far as—or other than the original proposal.

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Mr. Farkas: Mr. Examiner, I should like to ask the reporter to mark for identification as General Counsel's Exhibit Number 4—

Trial Examiner: Let me ask. Was the other document actually shown the witness as identified as Number 3?

Mr. Farkas: He had it in his hand. I believe that he—I think we can safely say he didn't examine it.

Trial Examiner: Does anyone object to this being substituted as Number 3, and save mixing up numbers?

Mr. Gallucci: No.

Mr. Poulton: No objection.

Trial Examiner: Then I suggest you mark this as General Counsel's Exhibit Number 3 for identification.

Mr. Farkas: I think the record should note that an original has been obtained and the General Counsel would therefore substitute General Counsel's Exhibit Number 3, substitute the signed original in lieu of the printed agreement originally identified as General Counsel's Exhibit Number 3, and I would like to withdraw that printed copy.

Trial Examiner: In other words, what is now identified—

Mr. Farkas: —As General Counsel's Exhibit Number 3 is the original.

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Trial Examiner: And you are discarding the identification of the printed copy as General Counsel's Exhibit 3. Now, we will go ahead with that line of approach, and if eventually it is offered and received then the question of substituting something or withdrawing the original will be in order.

Q. (By Mr. Farkas) Now, Mr. Westbrook, I hand you what has been marked for identification as General Counsel's Exhibit Number 3. Would you turn to the sheet there, the first sheet, Article entitled "Recognition", and read to yourself Section 1? Have you read it to yourself?

A. Yes.

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Q. How did you first learn—through whom—who told you, in other words, that a contract had actually been signed; that names had been put on a contract between the Company and the International Association of Machinists? Who told you that? **A.** Between the Company and the Machinists? No one told me. I was there when the Union signed, which was the contract.

Q. Were you there when Mr. Adams and Mr. Schwartzmiller signed it? **A.** Mr. Schwartzmiller didn't sign that at the time Mr. Adams did here. I don't know when this was signed here.

Q. You don't know when Mr. Schwartzmiller signed it? **A.** His name wasn't on it when Mr. Adams signed it. That's when we were negotiating there, when our proposals were made up in Lancaster.

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Trial Examiner: Just let me ask one question here now. We have been talking about signatures on page—

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Mr. Farkas: Eleven.

Trial Examiner: —page 11. Now, there are two signatures on that page. That is correct, is it not, Mr. Witness?

The Witness: Yes.

Trial Examiner: All right, now, look at those two signatures. Which, if either of those, did you actually see put on the document?

The Witness: Mister—Did I see put on there? I didn't see either one of them put on there. I wasn't in the office at the time.

Trial Examiner: You didn't see either of those signatures put on?

The Witness: No. I wasn't watching when they were signed. There are others on there.

Q. (By Mr. Farkas) Mr. Westbrook, who is superior in position with the company? Mr. Adams or you? A. Mr. Adams isn't there. Mr. Adams was at that time.

Q. At that time Mr. Adams was? A. That's right. He was vice president.

Q. Now, through whom, what individual told you that a contract had been signed, if anyone? A. Mr. Adams.

Q. When did he tell you that?

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A. The contract had been signed August 17th. When you say "signed", that is a contract signed by all parties, when it was signed.

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Trial Examiner: What is Exhibit "B" about? Did you ever see before?

The Witness: I have seen them, your Honor.

Trial Examiner: What is it about? What is Exhibit "B" about?

The Witness: It is incorporated into the agreement of August 10th, Seniority.

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Trial Examiner: After Exhibit "B" is there anything else attached to that document?

The Witness: Yes.

Trial Examiner: What is that called?

The Witness: Exhibit "A".

Trial Examiner: It happened to be on after "B", does it?

The Witness: Yes.

Trial Examiner: How long is Exhibit "A"?

The Witness: Two pages.

Trial Examiner: Has it got any signatures on the second page?

The Witness: Yes.

Trial Examiner: All right, how many signatures are there?

Mr. Poulton: May I make an explanation, Mr. Trial Examiner?

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Trial Examiner: Just a minute. I will hear explanations later.

The Witness: Sixteen, all together.

Trial Examiner: Is there any signature for the company on it?

The Witness: Yes. Mr. Adams'.

Trial Examiner: What is Exhibit "A" about?

The Witness: This is an agreement between the two on classifications and rates.

Trial Examiner: And there is an Exhibit "A" and an Exhibit "B" attached to this contract?

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The Witness: Yes.

Trial Examiner: All right. Now, to the best of your knowledge, when was it that you first learned that the first document which had only two signatures on page 11—the first part of that document—when, to the best of your knowledge, was it you first learned that those two signatures were on that document?

In other words, that first document of eleven pages had been signed. When did you first learn that?

The Witness: That was during the—or during the date of the signatures here, when we started the negotiations, that I seen myself.

Trial Examiner: What negotiations are you talking about? You were referring to the supplements on there when you answered.

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me?

The Witness: The first one on here was the 17th of August here. This was on—August the 10th—when these papers were worked up here, and then Mr. Schwartzmiller's signature, I don't recall he put that on there, as I told you a while ago, down at Lancaster.

Trial Examiner: I am asking you, first, on the first eleven pages.

The Witness: That I knew about these, you mean?

Trial Examiner: There are two appendices. When did you first know those first eleven pages were signed by those two individuals? Forget the appendix. I am trying to help you straighten this thing out in your own mind. There are three different documents there, actually, clipped together. Three different groups of signatures, aren't there?

The Witness: That's right. August 10th.

Trial Examiner: There are signatures on the main con-

tract of eleven pages. Only two people signed that. That is correct, isn't it?

The Witness: Only two signed.

Trial Examiner: Then you have an "A" and a "B", each two pages long, and each with several signatures?

The Witness: Yes.

Trial Examiner: Now, forget "A" and "B" at the moment, and let's talk about only the main document of eleven pages with

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two signatures. When did you first learn, and how did you first learn, that that document had been signed?

The Witness: I learned about it August 10th, when we started out on it.

Trial Examiner: Do you know who told you? You said a minute ago you didn't see either signature put on, did you?

The Witness: Not the signature, but we were working on it, on the original contract.

Trial Examiner: You consider that first eleven pages the original contract?

The Witness: Not the original. I mean the one we were working on for the—the negotiation of the contract—but the signatures on here were July—August 17th, when the final signatures of it, that I know about it.

Trial Examiner: When you say "the final signatures" what signatures are you talking about?

The Witness: I mean the signatures of Mr. Adams on here, and I mean Schwartzmiller, the first time he signed.

Trial Examiner: You are still talking about those first eleven pages?

The Witness: Yes.

Trial Examiner: As far as you know, it was signed on August 17th?

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The Witness: Yes.

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Trial Examiner: You were not vice president at the time of the negotiation of these documents and when they were signed?

The Witness: No.

Trial Examiner: What was your position at that time?

The Witness: Plant Manager.

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Trial Examiner: When do you recall was the first thing you recall you heard about any negotiations at any time with the Machinists about a contract?

The Witness: When was the first?

Trial Examiner: The first inkling. The first suggestion. The first thing you heard about any kind of a contract in negotiations?

The Witness: The 10th—The first I heard was back on July 17th, when we received that letter or note there, that they had a majority and wanted to come in.

Trial Examiner: Did you get the letter?

The Witness: It came to the company.

Trial Examiner: How did you learn about it?

The Witness: I opened it up there and read it. It was addressed to the company.

Trial Examiner: You don't know whether it came to you first or someone else?

The Witness: As I recall, it was not addressed to any individual.

Trial Examiner: You don't know whether it came to you first or someone else?

The Witness: It was not, as I recall, addressed to any individual. It was addressed to Bryan Manufacturing.

Trial Examiner: And you don't recall whether the document was handed to you by a clerk, whether you opened it, or whether some other official of the company came to you about it?

The Witness: It was opened by the regular fellow that opens the mail. It was not to an individual.

Trial Examiner: You think you got it first?

The Witness: I can't say who got it first. I imagine he did.

Trial Examiner: Who is "he"?

The Witness: The officer—the man in the office there that opens the mail.

Trial Examiner: He isn't a person who would have any authority to do anything about it, or anything like that?

The Witness: No.

Trial Examiner: Now, can you remember anything at all whether you were the first responsible official who got ahold of that letter, and you went to somebody else with it, or somebody else got the letter and came to you?

The Witness: It was handed to me by the office, there, and I called Detroit.

Trial Examiner: Did you talk to Mr. Adams or any other official?

The Witness: No.

Trial Examiner: You got the letter and then you called

Detroit?

The Witness: Yes.

Trial Examiner: Who did you call in Detroit?

The Witness: I called Mr. Probst. The office—and he happened to be the one that answered.

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Trial Examiner: That's your best memory of how the matter first came to your attention?

The Witness: The first thing that was ever started on.

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Trial Examiner: I understand this is all testimony the witness is giving at the moment.

Do you have any memory now that the signatures were put on that first document, the eleven pages, on the 10th of August, or is that just the date that is on the contract?

The Witness: It is one date that I recall that we were in there. That is the date we were working on this, and the date I assume Mr. Adams signed it.

Trial Examiner: Do you have any memory of August 10th, aside from the fact it is on the contract?

The Witness: August 10th was the date it was official. It went back in effect.

Trial Examiner: I am asking you this question: Do you have any memory of August 10th as a day, aside from the fact it appears there on the contract? Do you remember that day,

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August 10th, as a date on which you were doing anything?

The Witness: August 10th was the date of the contract. We were negotiating, the way I remember it.

Trial Examiner: I am trying to find out, do you actually remember independently of the fact that is the date on the contract? Do you have an independent—if that contract had never been shown to you and nobody had said August 10th to you do you have an independent recollection? An independent recollection that on August 10th you were negotiating that contract?

The Witness: Yes.

Trial Examiner: You are sure now that you remember it?

The Witness: That's right.

Trial Examiner: Regardless entirely of any date on that contract, that there were negotiations on that contract on August 10th, is that correct now?

The Witness: Yes.

Trial Examiner: Now, tell me about those negotiations on August 10, 1954, that you remember.

The Witness: There was the negotiations of the—

Trial Examiner: In the first place, where were the negotiations when you were there on August 10th?

The Witness: August 10th was in Lancaster, and we met down there with Mr. Probst and Gallucci there and Schwartzmiller.

Trial Examiner: How many were there?

The Witness: Mr. Probst, Mr. Gallucci and Schwartzmiller

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and myself.

Trial Examiner: Anybody else?

The Witness: No.

Trial Examiner: Was Mr. Adams there?

The Witness: No. He was away at the time.

Trial Examiner: What did you actually do at that time?

The Witness: Working on the contract, getting a proposal to try to present what we wanted and what they wanted. That's the contract.

Trial Examiner: Had you had any other documents? Was there a document there on the 10th when you gentlemen were together in Lancaster? Was there any kind of a document before you when you were working there?

The Witness: What do you mean, a document?

Trial Examiner: Typed pages, written pages. You know what a document is.

The Witness: Typed pages, yes.

Trial Examiner: You had some typed pages?

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The Witness: Working on what we wanted and what the union wanted.

Trial Examiner: You know where those typed pages came from?

The Witness: The attorneys had them.

Trial Examiner: Do you know how those attorneys got them?

The Witness: They were working them up. They were dealing

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in that all of the time.

Trial Examiner: Is what you had before you there in that meeting of the 10th of August, these typed pages, was that the first draft of any kind of a document in connection with this contract that you saw?

The Witness: Yes.

Trial Examiner: You don't know whether the attorneys got that up, your attorneys, or whether the union representatives got it up or not?

The Witness: It was a contract, all I know. Just routine. We were working on what we wanted and what they wanted. Whatever we had.

Trial Examiner: You don't know who drew up this document?

The Witness: No.

Trial Examiner: Was there any discussion about the document?

The Witness: There was discussion.

Trial Examiner: Can you remember anything that was said during that discussion of that document? Any questions that you asked, or any discussions you took part in? Were you the only representative of the Company, aside from the attorneys?

The Witness: I was the only one there. Mr. Adams wasn't there; but I didn't have anything to say. I just

listened to it. I don't recall any certain paragraphs in here we argued on. Just regular routine contract.

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Trial Examiner: Do you remember how that meeting ended?

The Witness: No.

Trial Examiner: Do you remember whether there was any kind of agreement among the parties that you would meet again, or that you would change certain provisions, or that you would sign the document, or what happened?

The Witness: Meet again, sure, for the negotiations in Reading with the employees, as far as getting these other matters back here.

Trial Examiner: Do you know what the situation was with respect to the document before you left there, at the end of that meeting? Had you agreed to anything or not?

The Witness: No, I had not, myself, agreed—

Trial Examiner: Mr. Adams wasn't there?

The Witness: We agreed to take it back and go before all of the employees, the agreement back. They must meet on it; and then finish the negotiations.

Mr. Farkas: May I ask just one question, Mr. Trial Examiner?

Trial Examiner: I am just going to ask one or two more questions.

Mr. Farkas: All right.

Trial Examiner: Do you know when, with respect to that meeting—were there any signatures on this document you were talking about at that meeting on the 10th of August?

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The Witness: I never noticed, because I didn't sign it.

Trial Examiner: Do you know when, with respect to that meeting on the 10th of August you just told me about,

(147)

these two signatures were put on the first eleven pages of the document you have in your hand?

The Witness: Do I know when they were put on? I don't know when they were put on. I didn't sign them.

Trial Examiner: All right, proceed.

Q. (By Mr. Farkas) Now, Mr. Westbrook, I believe you indicated at that August 10th meeting there was an undersanding that there would be further discussion and negotiations with respect to the matters contained in those two exhibits, is that correct? A. That's right.

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Q. Now, am I correct that after the August 10th meeting, when that meeting broke up, what there was left to do in negotiating was the matters contained in "A" and "B" exhibits? A. And for any corrections on the contract.

Q. And for any corrections in the original document?

A. According to whatever the employees wished.

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Mr. Farkas: Mr. Examiner, I don't think I called for addresses at all, and if they will examine the subpoena they will so find. I would like to have the reporter mark for identification as General Counsel's Exhibit Number 4 a document consisting of six typewritten pages stapled together, purporting to be the payroll of employees of the Bryan Manufacturing Company, Reading plant, as of August 10, 1954.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Farkas) Mr. Westbrook, I hand you what has been marked for identification as General Counsel's

Exhibit 4, and ask you if you have ever seen that document before. A. Yes.

Q. Was that prepared either by you or under your direction? A. It wasn't by me.

Q. Was it under your authority or under your direction? A. No.

Q. Do you have knowledge of the preparation of that document? A. Yes.

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Q. Have you had an opportunity to examine that prior to this? A. No.

Q. Do you care to examine that? A. In what way? What do you mean?

Q. Who prepared that? A. Mr. McFann.

Q. In view of that fact, are you prepared to testify that is an accurate—represents an accurate preparation of the payroll as of August 10, 1954? A. I would say to the best of my knowledge, yes.

Q. Now, does that payroll reflect the layoffs of August 10th? A. I couldn't tell you whether it reflects it. What do you mean? The number of people?

Q. Yes. A. It depends on how many are on here. The ones that were laid off, whether they were on here or not, I wouldn't know. It is the payroll. They might have been on here at that time.

Q. Do you have any knowledge of the actual number? Can you ascertain very quickly, by counting the number of people on the payroll?

Mr. Gallucci: Mr. Trial Examiner, may he read the whole number, to be exact on that?

Mr. Farkas: Whatever he testifies to. He is reading from that.

The Witness: One hundred fifty-six, if I did not make a

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mistake on it.

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Mr. Farkas: Excuse me just a moment. Before starting to ask Mr. Westbrook any questions at this time I offer in evidence General Counsel's Exhibit Number 3.

Trial Examiner: Is there any objection to this document being received in evidence?

Mr. Gallucci: No objections.

Mr. Poulton: No objection.

Trial Examiner: There appears to be no objection, and the document is admitted in evidence as General Counsel's Exhibit Number 3.

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Q. (By Mr. Farkas) Now, Mr. Westbrook, when, if you have

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knowledge, was the announcement of the contract between the Bryan Manufacturing Company and the International Association of Machinists announced to the employees, if you have knowledge? A. When was it announced to the employees? The contract?

Q. Signed? A. There was no contract signed until after their meeting, between the 10th and the 17th, we only got the contract back and Mr. Adams signed it. They knew there was a contract, apparently.

Q. Did you personally make any announcement in a meeting of any kind, or authorize the publication of any written notice indicating that a contract had been signed between the International Association of Machinists and the Company? A. No, I didn't put up any notice.

Q. Did you ever authorize the publication of a notice? A. No.

Q. Did you ever address the employees in the plant as a group and announce that? A. No.

Q. Do you know of your own knowledge whether any individual representing the company, Mr. McFann or Mr. Adams or any other individual who was a representative of the company, who did address the employees and make an announcement? A. As a group?

Q. As a group? A. No.

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Q. Do you know of any individual who authorized or wrote out a written notice of announcement of the signing of the contract between the company and the union? A. Not that I know of myself.

Q. Now, isn't it a fact, Mr. Westbrook, that on or about the sixteenth of August a number of employees were called into the office? A. By Mr. Schwartzmiller's request.

Q. The employees who were called in were called in by the company at Mr. Schwartzmiller's request? A. At his request.

Q. And who called those employees in? A. I think Mr. Schwartzmiller gave Mr. McFann a list, and he went out with the list and called them in.

Q. And do you know approximately how many employees were called in? A. No, I didn't see the list.

Q. Were you present? A. When they came in?

Q. At the gathering, when they came in? A. When they came in I was in there.

Q. Am I correct that date was August 16th? A. About the 16th or 17th. I wouldn't say exactly.

Q. All right, sir. Who else was present representing management, besides yourself?

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A. I don't know if Mr. Adams was in there. They called him in, and I introduced him and told him that was Mr. Schwartzmiller. I assumed they knew him. And I walked out.

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Q. Was there anybody else in there from the union?
A. No.

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Trial Examiner: Did you say you introduced Schwartz-
miller to them?

The Witness: I announced who he was. I said, "I assume
you know him, and he requested you be called in."

Trial Examiner: Do you have an idea how many em-
ployees were in the office, approximately?

The Witness: There seemed to be—looked like about
ten or twelve. I don't know. I didn't count them, because
I didn't see the list.

Q. (By Mr. Farkas) Mr. Schwartzmiller was there
represent-

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ing the union, and yourself, and was Mr. McFann there?

A. I called him in and gave him the list to go get the
employees.

Q. And Mr. McFann went out in the plant and told the
employees to report to the office? A. Yes.

Q. So that actually, in your opinion—assuming your
recollection is good—Mr. McFann would be better able to
tell who the individuals were? A. I would assume so.

Q. He probably works in closer connection with the em-
ployees? A. Yes.

Q. Now, isn't it a fact, Mr. Westbrook, at that meeting
Mr. Schwartzmiller announced to the employees that he
was from the IAM and they had a contract? Is that
correct? A. I didn't stay in there.

Q. Oh, you didn't stay in there? A. No. I left the
minute I told them who he was.

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Q. After this meeting in which Mr. McFann went out

and called in the girls, and Mr. Schwartzmiller was there, isn't it true there was another meeting? A. Yes.

Q. That was about a day or so later? A. No.

Q. How long after that? A. The same day, the 16th, or somewhere around the 16th there.

Q. Could I be correct, then, it is possible you may be in error that the first meeting was on the 16th, and the second meeting, when there was discussion of the wages and seniority—

Mr. Gallucci: I object to that, your Honor. The subject matter of these meetings hasn't been gone into at all.

Mr. Farkas: I am asking him. I am going into it now.

Trial Examiner: You say there was a second meeting?

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The Witness: There were several that day.

Trial Examiner: What?

The Witness: Back and forth, on our negotiations, on the 16th.

Trial Examiner: On the 16th?

The Witness: The 16th or 17th, in there, yes.

Trial Examiner: Can you recall with certainty whether the second meeting you just started to tell us about actually took place on the same day, on the 16th, or could it have happened that a day intervened, and it didn't take place until the 17th? Are you clear on that in your memory?

The Witness: No, I don't think there was a day elapsed. We had several meetings that day, in and out.

Trial Examiner: Your memory is that several meetings took place on that day?

The Witness: Yes, sir.

Q. (By Mr. Farkas) Were you present at those meetings? A. I sat in the room.

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Q. All right, now, having that in mind, can you recall whether or not that occurred that same day? That was the first meeting, or did it follow it by a day? A. We had several meetings that first day, after we started negotiations, yes, back and forth.

Q. Were you present during those discussions with respect to wage rates and classifications and seniority? A. Yes.

Q. Did you take part in those discussions?

Mr. Gallucci: I object again, your Honor. He has been talking about wages, wage rates and classifications, and he is going into seniority, which again has—

Mr. Farkas: I included the word "seniority".

The witness: I beg your pardon. Seniority came later.

Q. (By Mr. Farkas) The question on seniority came later? A. Yes.

Q. All right, sir. Did you participate in discussions with respect to wage rates and wage classifications? A. To a certain extent. Mr. Adams and Mr. Probst mostly did that.

Q. There was a discussion between Management and the Union and the employees? A. Discussion with Management and the employees that were in there at that time? Yes.

Q. And do you recall what the conclusion or the decision or the result of those discussions was? A. Well, the conclusion—they were finally agreed upon, and they would present them to the employees at a meeting.

Q. (By Mr. Farkas) Mr. Westbrook, I hand you General Counsel's Exhibit Number 3, and I turn to Exhibit "A".

What is the date indicated on there? The date on which that was signed? A. The 17th.

Q. All right. Were you present then? A. I was in the room, yes.

Q. Did you see the people sign that document? A. I seen them signing. I assumed that's what they were signing.

Q. Well, were there any other documents signed that day? A. No.

Q. Am I correct in my understanding it was this document or one like it that was signed?

Mr. Gallucci: He has already testified to that.

Mr. Farkas: Mr. Examiner, is there any reason why I can't make sure this witness is testifying with a degree of certainty, and that's all I am trying to do.

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Trial Examiner: I will overrule your objection. I will overrule your objection.

The Witness: These were signed on the 17th, after the mass meeting.

Trial Examiner: The witness is pointing at the last page of the document, when he made that statement.

Mr. Farkas: Exhibit "A".

Trial Examiner: Which is the last page of the document, the way it is put together.

Mr. Farkas: That is correct.

Trial Examiner: All right.

Q. (By Mr. Farkas) Now, Mr. Westbrook, I hand you that portion of the contract which is marked Exhibit "B", and Exhibit "B" I believe consists of two pages, is that correct? A. That's correct.

Q. Now, turning to the second page of Exhibit "B", what is the date indicated there, if any? A. September 2nd.

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Mr. Gallucci: What was that date again?

The Witness: September 2nd.

Trial Examiner: These are both 1954?

The Witness: Both 1954.

Q. (By Mr. Farkas) And the signatures as affixed or placed upon that document were placed there when? A. On September the 2nd.

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Q. September 2nd. Were you present? A. That's right.

Q. Do you remember how the employees were present in your office? Was this signed in your office? A. That's right.

Q. Do you remember how the employees were present, or what the circumstances were for their being present for the signing of the portion of the contract market Exhibit "A", on the 17th of August? How did they get to your office?

Mr. Gallucci: I think that is irrelevant.

Trial Examiner: I will overrule it. Answer the question, if you know.

The Witness: How did they get there?

Q. (By Mr. Farkas) I realize they walked to your office, but I mean by what authority did they get there? A. Mr. Schwartzmiller called them in there. I don't know how they got there.

Q. Was this during working hours? A. I don't recall if this was signed in the evening, this one, or if it was during the day. The last one was in the evening.

Q. Exhibit "B" you believe was in the evening? A. I mean the last contract. I don't recall if that was during the day or evening. It was after the meeting.

Q. You have no actual recollection?

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A. I don't recall. I don't recall which it was.

Q. (By Mr. Farkas) You, as vice president of the company, also manage the Hillsdale plant? I believe you testified you have two plants? A. Correct.

Q. Do you have a collective bargaining contract at the Hillsdale Plant? A. The present contract at Reading covers this.

Q. You do have a contract? A. Yes.

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Q. Did you sign the contract for the Hillsdale plant? A. No.

Q. Who did? A. Mr. McFann.

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Trial Examiner: Did that contract include two plants?

The Witness: That's right. Plants Number 1 and 2.

Trial Examiner: Were the negotiations for the two plants conducted at the same time, for both plants at the same time?

The Witness: That's right.

Trial Examiner: All right, proceed.

Q. (By Mr. Farkas) By "the two plants" you mean the Reading

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plant and the Hillsdale plant? A. Yes.

Q. The Hillsdale plant being the newly-acquired plant? A. That's right.

Trial Examiner: When did you first start having any responsibility for the Hillsdale plant?

The Witness: Last Monday, of any production in there. I am only in the production end, Monday of this week.

Trial Examiner: You started to have responsibility for

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production at the Hillsdale plant as of the Monday of the present

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week, is that correct?

The Witness: That's right.

Trial Examiner: Is that when the first production started taking place in Hillsdale?

The Witness: That's right.

Trial Examiner: How many employees were there at that time?

The Witness: Twenty-one.

Mr. Farkas: How many was that?

The Witness: Twenty-one.

Q. (By Mr. Farkas) How many employees are there at the Hillsdale plant today? A. Twenty-one, on the payroll. I don't know if they are there or not.

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Mr. Gallucci: Referring, first, to this matter of the Hillsdale plant, Mr. Trial Examiner, I will have to call my office to get the date on the closing statement which I entered into with the Dana Corporation, to get the date upon which the Bryan Manufacturing Company became the legal owner of the facility known as the Hillsdale plant.

Trial Examiner: Just so the record shows it eventually. Whatever form it is put in, I just want the information in the record.

Mr. Gallucci: Approximately, I would say, it has been about six weeks or two months.

Trial Examiner: All right. Cross examine.

Cross Examination

Q. (By Mr. Gallucci) Mr. Westbrook, in regard to this problem of the Hillsdale plant, referring to the problem—I would like to go back a little further and ask you what,

if any, were your plans regarding the number of employees which eventually would be employed as a regular staff at your Reading plant when you went into business at Reading? A. When we opened Reading?

Q. Yes. What were your plans there as to the number of people you would employ? A. We figured one hundred fifty to two hundred would about

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be the tops that we could get in there.

Q. What is your present employment at the Reading plant? A. Around five hundred.

Q. I beg your pardon? A. Five hundred. Approximately that. I don't say the exact figure.

Q. Can you tell us why, if you have the knowledge, why the plant in Hillsdale was purchased? A. My understanding, we were getting too crowded at Reading, and we needed more space. We could not get any more help in there.

Q. Was it ever—was it ever your intention or the intention of the company, or is it your intention at present to hire new employees from the outside at the Hillsdale plant? A. No.

Q. How do you intend to staff this new plant at the Hillsdale plant? A. They would be transferred from Reading over here to the new location.

Q. You say that there are some twenty employees at Hillsdale at present? A. That's right.

Q. And what type of work are these employees engaged in? A. Well, as far as production work, it will be assembly work.

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Q. How does this work compare with the work being done at the Reading plant? A. It is practically the same, similar.

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Q. You say it is practically the same or similar? A. Similar.

Q. What is different about it? A. The operation would be the only thing.

Q. What do you mean by "operation"? A. The type of machines that are used over here, which we moved them all out to this plant here and added more.

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Q. (By Mr. Gallucci) Of the twenty-odd employees employed at Hillsdale have you employed them from the outside or have you transferred them from the existing Reading facility? A. From Reading.

Q. Is it your intention in the future to hire from the outside or to transfer from the existing facility at Reading? A. Transfer from Reading as long as they are needed here.

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Q. (By Mr. Gallucci) Mr. Westbrook, when did you first hear from the union in question? A. July 17th.

Q. What did you do upon hearing from them on July 17th? What was the first thing you did? A. Well, the first thing, I called Mr. Probst's office.

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Q. Mr. Probst is your attorney? A. That's right, attorney, and reported to him I had received the letter.

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Q. (By Mr. Gallucci) Can you tell us as much of the conversation that took place as a result of that telephone call as you can remember at this time? A. Well, I explained to him what the letter stated there, and asked his advice and he stated that he would advise recognizing

them because he had been doing business with them in other plants.

Q. Did he tell you where he had been doing business with them? A. California, San Diego, one at Lancaster, and Zanesville, I believe it was. Zanesville, Ohio.

Q. Go on. A. And he said he had found in cases in dealings with the AF of L Machinists before that any time they contested—

Q. Any time who contested it? A. The company—the union had won out, and he found them very good, fair to work with there, and we would get beaten in the end, and in order to go along with the people his suggestion was to go ahead and arrange for a meeting.

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Q. Without an election? A. With the organizer.

Q. I misunderstood you. Did you state that he had suggested that you recognize this union without an election? A. Oh, no, no.

Q. Without a National Labor—

Mr. Farkas: Mr. Examiner, I am going to object.

Trial Examiner: I will sustain the objection. Ask him about the conversation. Ask him if an election was mentioned at all, and if so, what did he say about it?

Q. (By Mr. Gallucci) During this conversation was there anything mentioned about the Labor Relations Board-supervised election? A. No.

Q. Well, what was said specifically regarding the recognition of this union? A. Well, that he had been having dealings with them. In fact, he was dealing with them at that time in Lancaster, and that he figured we could get along, and we might as well go ahead and have the meeting with them, in which he said he had the majority of votes there, or verify it, the employees wanted a union.

Q. Who said they had a majority of the people? A. The letter that came in, I took from that. I don't remember the wording.

Q. The letter of July 17th? A. That if he was wishing for a meeting that he would have a majority on there.

Q. Can you tell me when, after this phone call, when, if at all, you next met with Walter Probst? A. I don't know the exact date, but it was about a week later at Detroit we talked to him and arranged a meeting for the 10th in Lancaster.

Mr. Farkas: Mr. Gallucci, may I ask, talked to whom?

Mr. Gallucci: I am getting—

Mr. Farkas: He said something about Detroit.

Mr. Gallucci: My question was when, if at all, you next met with Walter Probst. Wasn't that my question?

Mr. Farkas: I am sorry.

Trial Examiner: I thought that's what it was.

Mr. Gallucci: His answer was "About a week later in Detroit".

Q. (By Mr. Gallucci) Who was at this meeting in Detroit? A. Mr. Adams and myself went up, and Mr. Probst.

Q. Was there anyone else there? A. You were in Lancaster at the time.

Q. What was the purpose of this meeting with you and Mr. Adams and Mr. Probst? A. In Detroit?

Q. In Detroit?

A. To talk over the plan for a meeting with Mr. Schwartz-miller.

Q. To talk over what plan? A. Would we meet him and would we recognize him, or go along as the union.

Q. Were there at all, with this meeting with you and

Mr. Probst, any discussions of a contract to present to the union? A. Well, we had our own—I mean, we talked over one of our own proposals because we figured he would have one, too.

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Mr. Gallucci: Yes. Maybe we should go back. I am trying to recall; my question was "What was the purpose of this meeting in Detroit?" I am trying to recall the exact answer. It seemed to me there were several purposes.

The Witness: Well, we were preparing the proposal that we would propose, and the contract, at the meeting, when we met him at Lancaster.

Q. (By Mr. Gallucci) Was there any understanding reached at that time, as to when actual negotiations with the union would begin? A. No, not with the union, other than meeting Mr. Schwartzmiller on the 10th. We set the date there with him. We would meet him on the 10th.

Q. And did that, in fact, happen? A. It did.

Q. Now, who was present at this meeting on the 10th? A. Myself, Mr. Probst, Mr. Schwartzmiller, and you.

Q. What was the subject matter of this meeting on the 10th? What happened there? What was said and what happened? What were the results? A very broad question.

A. We had our proposal, Mr. Schwartzmiller had his. We argued back and forth, cutting out, putting in, until we arrived at an original contract, the contract only, there, that we finally agreed upon there to be presented to the employees.

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Q. Was there anything written that day or that night, August the—on August the 10th? A. On the final?

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Q. On your final agreement? A. No.

Mr. Farkas: Just a moment. Just a moment, Mr. Examiner. The use of this word "final" with this witness has raised a number of confusing points.

Trial Examiner: Yes, that is true.

Q. (By Mr. Gallucci) We will refer to this as General Counsel's Exhibit Number 3, the agreement of August 10th.

Trial Examiner: But it is not just the agreement of August 10th. It has got two supplements, that the witness has talked about at some length. If you want to talk about just that first part suppose you make it clear to the witness you are talking about those first eleven pages only.

Q. (By Mr. Gallucci) In regard to this first part, which is on page 11, when, to your knowledge, was this prepared in written form? A. It was right after the 10th, Mr. Probst type up and mailed to me between the 10th and the 17th—16th or 17th, there, around the 12th or 13th, I presume. I don't have the date when he mailed it to me.

Q. Now, was there—was there any understanding reached that night on August the 10th, regarding the effective—the

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effective date of such an agreement? A. There was an agreement between us there it would be effective back to August 10th; if and when it was accepted by the employees, and signed, it would be retroactive to that date.

Q. Here, on page 11, again I see two signatures. One appears to be R. W. Adams, Vice President, signing for the company; and E. L. Schwartzmiller, signing for the International Association of Machinists. Can you tell me when, if you know, this signature of R. W.—of Mr. Adams—was affixed? A. Well, it was after I received the contract back from Reading, around the 12th or 13th. Along there. There is no date on, to show.

Q. Can you tell me, if you know, when this signature on page 11, of E. L. Schwartzmiller, was affixed? A. Well, that was affixed there at the time after the meetings and negotiations and all by the union was agreed upon, by all employees, as I recall.

Q. Can you fix any date in your mind as to when that might have happened? A. The contract is the 17th, the date of the contract.

Q. Now, getting back to the subject matter of this agreement, which ends on page 11, was this intended to be as a result of that meeting of August 10th, was this intended to comprise all of the understanding between the company and the union? A. All of it, the company and the union?

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Q. Yes, do you understand my question? A. As far as the contract to be voted upon, all of the employees did, unless they changed it.

Q. Was there anything else left to agree upon at any later date?

Trial Examiner: Are you asking the witness again about the first eleven pages?

Mr. Gallucci: Yes.

Q. (By Mr. Gallucci) Now, I am talking about the meeting of August 10th, as a result of which your statement, the first eleven pages so far we have been talking about, when they were prepared. At that meeting was there anything left to be agreed upon later or was this intended to consist of the entire agreement between the union and the company? A. No, no. Rates and seniority and all were to come later, and with the approval of this contract by the employees.

Q. Why wasn't the—let me say this: Why weren't the rates and other things mentioned agreed upon at this time?

A. We could not without the employees' voting on it, negotiating.

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Q. I have now here in my hand a part of General Counsel's Exhibit 3, which is entitled "Exhibit A", on the last page of which appear a series of signatures. A. Yes.

Q. When, to your knowledge, was this exhibit "A" discussed

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first between the company and the union? A. Well, that was—Exhibit "A"—the 16th, on the 16th, there. That is, the wages.

Q. That is correct. Wage rates. Who was at the meeting held to discuss the subject matter of Exhibit "A"? A. Myself, Mr. Adams, Schwartzmiller, and the people that he had called in.

Q. Now, how did—how did these people—how did these people here on the last page happen to be called into the meeting? A. Mr. Schwartzmiller asked for them, gave a list of names to be called in.

Q. Can you identify the list? What kind of a list was it? A. Just on a yellow sheet of paper.

Q. Do you know who wrote the list? A. No, I don't.

Q. Did he have it with him when he came in? A. Yes.

Q. Was it typewritten, in ink, or how was it prepared? A. I don't know if it was typewritten, in ink or not. He handed it to Mr. McFann when I called him in to go call the list of names he gave us in. I did not handle the list.

Q. Can you tell me when, to your knowledge, the signature of R. W. Adams, as vice president, was affixed to this agreement called Exhibit "A" and containing wage rates and classi-

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fications? A. After the negotiation there, and it was typed up, yes, he signed it to be presented to the employees.

Q. At the time he signed it did anyone else sign? A. No.

Q. Did any of these other signatures—E. L. Schwartzmiller, William Jack, and the rest of them? A. No.

Q. When were those signatures put on there? A. After the meeting and they all agreed, and they came back, the committeemen and Schwartzmiller, and said it was passed on and they were ready to sign.

Q. After "they" all agreed. After who all agreed? A. All of the employees.

Mr. Farkas: I will object to that as a conclusion.

The Witness: In the meeting there.

Q. (By Mr. Gallucci) Do you have any knowledge—

Trial Examiner: I will let the record stand. You examined the witness on this point. There is testimony already about the meeting.

Q. (By Mr. Gallucci) Do you have any knowledge about the membership meeting? A. Yes, they had a meeting.

Q. Who had the meeting? A. The union, the employees.

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Q. What employees? A. All the employees that were there that attended. I don't know how many attended, or who they were, or anything, but the committee—whatever you call them.

Q. Do you have any knowledge of the number of employees who may have attended this meeting? A. No, I was not there. I don't know.

Q. When you referred to this meeting of employees, are you referring to any meetings held solely with this group appearing on the last page? A. No.

Q. What meetings are you referring to? A. The mass meeting, a vote of the employees, a majority.

Mr. Farkas: I will object to that. He has no knowledge of what went on there, or whether or not there was a vote or not.

Mr. Gallucci: He certainly has knowledge.

(201)

Trial Examiner: Let me clear this up. In the first place, did you attend the mass meeting yourself?

The Witness: No.

Trial Examiner: As the representative of Management, working on this contract, when did you first learn there was to be a mass meeting?

The Witness: When they agreed on these, the company, he said he would have to hold a meeting and give the employees a

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chance to decide on it, too.

Trial Examiner: Who said they would have to hold a meeting?

The Witness: Schwartzmiller, the organizer.

Trial Examiner: Was that after the document had been signed by the representatives of the company?

The Witness: That's right, he signed, showing they were willing to accept it if the others were.

Trial Examiner: Do you know where this mass meeting was held?

The Witness: No, I do not.

Trial Examiner: Were you asked permission at all to hold it in the plant?

The Witness: No.

Trial Examiner: Do you know whether it was held in the plant?

The Witness: It was not in the plant.

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Trial Examiner: Were you told before or after the meeting whether it was a meeting of all of the employees in the plant, or all of the members of the union? Were you told either of those things? Yes, or no?

The Witness: I was told that by Schwartzmiller, he would have an election on it and a vote on it at a mass meeting.

Trial Examiner: He called it a mass meeting, and that's all you know?

The Witness: That's right.

Trial Examiner: You don't know where it was held?

The Witness: No.

Trial Examiner: You don't know whether it was a mass meeting of the members of the union or all of the employees or what?

The Witness: No.

Trial Examiner: Now, after that meeting was held, or at least at some time later, were you told that such a meeting had been held?

The Witness: When they came back there.

Trial Examiner: When who came back?

The Witness: Schwartzmiller and the ones I had called in the office; which were negotiating with us.

Trial Examiner: As nearly as you can remember, tell me what you were told at that time, and who told you?

The Witness: After the meeting?

Trial Examiner: Yes.

The Witness: Mr. Schwartzmiller and the group, that they had the meeting, and everyone unanimously accepted it, they would sign the contract.

Trial Examiner: That's as near as you can remember what you were told?

The Witness: Yes.

Trial Examiner: Do you remember whether Mr. Schwartzmiller told you, or somebody else on the committee?

The Witness: They were all ready—they were all in

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there together, and he is the one who announced they were all ready to sign. They were all with him.

Trial Examiner: That's all the knowledge you have of this mass meeting, is what you were told under these circumstances you have just related, is that correct?

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Gallucci) Mr. Westbrook, I would like to ask you if you know what the effect of Mr. Adams' signature on this agreement of August 10th, which appears on page 11, what effect that signature was supposed to have? Do you understand me? A. If I understand right, that the contract was agreeable with the company, as stated there.

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Q. I will rephrase my question. To your knowledge when was the first announcement of any proposed agreements made to the membership included in this agreement?

A. Well, as far as I know of any announcement, between the 10th and the 16th, when they called them in there.

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Trial Examiner: Mr. Witness, the question is a simple one. If I understand counsel correctly now, he wants to know

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with respect to the people that are supposed to be covered. Do you know when any announcement was made to those people? If so, who made it?

The Witness: The announcement was made to them at the meeting, as far as I know, for the entire plant.

Trial Examiner: At the mass meeting you have talked about?

The Witness: As far as I know of any announcement. I never made any announcement other than when I sent out to get the people he asked for. Who he told, I don't know.

Trial Examiner: As far as you are concerned, you didn't make any announcement yourself, and no other officer of the company made any announcement that you know of?

The Witness: No.

Trial Examiner: And whatever announcement was made was at the mass meeting you told us about, and those are the things that were told to you, because you weren't there, yourself? Now, is that correct?

The Witness: Yes, sir.

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Trial Examiner: The question, as I understood it—see if the witness understood it the same way I did. The question was when did any representative of the union first sign any of these documents that are part of this exhibit. Now, that was the question, was it?

Mr. Gallucci: That is correct.

Trial Examiner: Did you understand that to be the question?

The Witness: Yes. Two of them, August the 17th.

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Mr. Gallucci: Would you care to mark this as Respondent Company's Exhibit 1?

(Thereupon, the document above referred to was marked Respondent Company's Exhibit No. 1 for identification.)

Q. (By Mr. Gallucci) After you received this letter, you

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talked with your counsel, did you have any further doubts as to the majority claims made by the union? A. No.

Q. And can you—

Mr. Gallucci: I have no further questions.

Mr. Poulton: May I see that?

Mr. Gallucci: It has been offered and it is in evidence.

Trial Examiner: No, it has only been identified. Are you offering this in evidence?

Mr. Gallucci: Yes.

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Mr. Farkas: Mr. Westbrook, do you recall when you gave that letter to Mr. Gallucci?

The Witness: After I called I mailed it on to Mr. Probst there. After I had talked to him, and he asked me to mail it on to him. He would look it over, and we would get together then.

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Trial Examiner: I might say the foundation, in my

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opinion, which has been laid, is ample foundation for the admission of this exhibit, and if the General Counsel wants to prove later it is a fraud in any fashion he may try to do so by the usual procedure. The document will be admitted into evidence. The objections to its receipt are overruled.

(The document heretofore marked Respondent Company's Exhibit No. 1 for identification was received in evidence.)

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Redirect Examination

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Q. (By Mr. Farkas) Would you please say—tell us what Mr. Probst told you over the phone—with respect to the letter which you received? A. Mr. Probst told me first we would have a meeting, come up there and we would talk about it more, but he said that he, the

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attorneys, had did business with the union; in fact, they were negotiating at that time with another company; and that in their dealings with them, when they say they had the majority, they had found each time they ~~have~~ always lost if they contested it, that they found they did have a majority.

Q. Did he say what he meant, if they had contested it?

A. In past cases they had contested it, and they had lost when they fought them.

Q. Did he say in what respect they had contested it?

A. No.

Q. Was he speaking of an election, or what, do you know?

A. No.

Q. And he then advised that the company recognized the IAM, did he not? A. Meet with them.

Q. And negotiate with them? A. Yes.

Q. And it was on the strength of the conversation with Mr. Probst that the representatives of the company, you and Mr. Adams and Mr. McFann, or anyone else who may have been present sat down and met with Mr. Schwartzmiller? A. That's right.

Q. On the strength of that conversation? A. Yes. We had a meeting.

Q. Isn't it a fact that in sitting down and negotiating with

the IAM the company was, in fact, recognizing them as the bargaining representative of the employees, in order to try to write a contract out?

Mr. Gallucci: I object to that question, your Honor. That calls for a legal conclusion.

Trial Examiner: I will sustain the objection. Did you, at any point after you received that letter, raise any question with Mr. Schwartzmiller about his representation of the majority?

The Witness: I did not.

Trial Examiner: You never asked him about it in any way further? Will you speak up, please?

The Witness: No, sir. I did not.

Trial Examiner: You didn't ask him if he had cards or to show you cards; or anything like that?

The Witness: No, sir.

Q. (By Mr. Farkas) Isn't it a fact on the strength of what Mr. Probst told you that you accepted their statement that they represented a majority? A. I did.

Q. Now, when you got that list from Mr. Schwartzmiller did he tell you who the people on that list were? A. No.

Q. Did he tell you why he had selected them?

A. No, sir.

Q. Or what the purpose was for having those particular names on the list? A. No.

Q. Did you question him about it? A. No, sir.

Q. (By Mr. Farkas) Is it now your statement that that portion of General Counsel's Exhibit Number 3, the first

eleven pages, was signed sometime between August 10th and August 16th?

Mr. Gallucci: Will you kindly show the witness what you refer to?

The Witness: Mr. Adams' signature.

Q. (By Mr. Farkas). I believe you testified, in answer to a question by Mr. Gallucci, that to your knowledge that was signed some time between August 10th and August 16th. Is that your testimony now? A. That is correct.

Q. Were you—

Mr. Gallucci: Your Honor, the record will show—

Trial Examiner: Just a minute.

Mr. Farkas: I am testing this man's credibility.

Trial Examiner: I understand what happened. One person mentioned Mr. Adams and one person didn't. Now, there are two signatures on there. Without anybody pointing at any signature, I am handing you that.

Now, when you answered that last question, how many of those signatures, and what signatures, were you testifying about?

The Witness: One. Mr. Adams'.

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Q. I am asking you, did you see him sign that, to the best of your knowledge? A. I assume it was it, yes.

Q. You did see him sign it? A. To the best of my knowledge I seen him sign. I assume it was this, because we didn't have any of the others.

Q. Where was this signed? A. In our office in Reading.

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Q. (By Mr. Farkas) Is it your testimony now that that signature of Mr. Adams was affixed to page 11 of General Counsel's Exhibit Number 3 sometime between August 10th and August 16th? A. That is correct.

Q. But you do not know which date? A. No.

Q. And you now testify that you were present at the time he signed that? A. I feel that I was, yes.

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Q. All right. Mr. Westbrook, you mentioned signatures which were affixed to Exhibits "A" and "B" by the employees, and I believe you testified that was after what was supposed to have been a mass meeting. Is that correct? A. That is right.

Q. Do you actually know, of your own knowledge, when those signatures were put on there? A. Yes, the 17th, July 17th.

Q. On the 17th of August? A. On the 17th, '54; August 17, 1954.

Q. And they were put on in your office, were they not? A. That's right.

Q. In your presence? A. I was in the room, yes.

Recross Examination

Q. (By Mr. Gallucci) You have stated, in answer to a question

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posed by the representative of the General Counsel, after you talked to Mr. Probst you then had no doubt of the ma-

majority status claim of the union. Let me ask you this, Mr. Westbrook: How long, how long has Mr. Probst been giving you legal advice? In other words, how long has he been your attorney? A. I don't remember the date.

Q. Can you remember approximately the year? I don't want to pinpoint it to a month or day. A. Well, '41 I assume it to have been. I would say the year.

Trial Examiner: 1941?

The Witness: '41.

Q. (By Mr. Gallucci) Has he, during that time, been giving you legal advice relating to you as a personal individual or on behalf of the corporation with which you may have been connected at times?

Mr. Farkas: I don't know what the relevancy is of this, Mr. Examiner.

Mr. Gallucci: Very relevant.

Trial Examiner: I will overrule the objection. Go ahead.

The Witness: Not personal. It has been with the company, business, where I have worked. If we wanted him we called on him for advice.

Q. (By Mr. Gallucci) During all of these years, Mr. Westbrook, to your knowledge has Mr. Probst ever given you any advice which you had reason later—which you later had reason to doubt the

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validity of? A. No, sir.

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Mary E. Watkins

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Will you state your full name, please? A. Mary E. Watkins.

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Q. Mrs. Watkins, where do you live? A. Allen, Michigan.

Mr. Gallucci: Will you pronounce the name again?

Mr. Farkas: Watkins, W-a-t-k-i-n-s.

Q. (By Mr. Farkas) Where do you live, Mrs. Watkins? A. Allen, Michigan.

Q. Are you employed at the present time? A. Yes.

Q. Where do you work? A. Reading, Bryan Manufacturing.

Q. Can you recall with any degree of accuracy approximately when you first began working there? A. January, 1954.

Q. Oh, I see. Are you a member now of the union, the International Association of Machinists, Local Lodge 1424? A. Yes.

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Q. You are? A. Yes.

Q. Can you recall when you became a member? A. It was at the meeting that we elected officers. It was either during the last of August or the first of September, in '54.

Q. And can you explain the circumstances, the reason for your becoming a member? A. Well, at that meeting we elected officers, become an officer or take part in the election, and as I understand it, we was to sign a card.

Q. Was there any discussion at that meeting with respect

to the signing of cards? A. I don't think I understand your question.

Q. All right, let me start it from a different approach. Who chaired that meeting? A. As I remember, it was Mr. Schwartzmiller.

Q. Was this the first meeting that you ever attended? A. No.

Q. Had you attended a prior meeting? A. Yes.

Q. When was that prior meeting? A. The first meeting was—the first meeting we had was after a shift work. They let us off at eleven o'clock, I believe, eleven or eleven-thirty.

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Q. What shift do you work on? A. Second.

Q. And that is from what hour to what hour? A. From, now it is from three to eleven. At that time we got out of work at 1:05, I believe.

Q. 1:05 a.m.? A. Yes.

Q. And you say a meeting was held at the end of your shift? A. They let us out early that night.

Q. Approximately when did you leave work? A. I believe it was about eleven. I don't remember the exact hour.

Q. And you went to the meeting? A. Yes.

Q. Where was that meeting held? A. At the VFW hall, I believe, or the Legion hall; one of them, in Reading.

Q. Do you know of your own knowledge whether there were any employees there who worked on other shifts? A. I don't remember of any.

Q. You don't recall whether or not that was the meeting of all of the shifts or just your own? A. I believe it was just our own. There might have been a few from another shift. I don't remember.

Q. Now, at that meeting you say Mr. Schwartzmiller chaired

it? A. I believe so.

Trial Examiner: Which meeting are you talking about?

Mr. Farkas: The first meeting.

Trial Examiner: The witness never testified about Schwartzmiller chairing the first meeting. She testified about him chairing the meeting where she joined.

Mr. Farkas: Mr. Examiner, I believe the record shows—and I would like to have her correct me if I am wrong—that Mr. Schwartzmiller chaired the first meeting. Am I correct?

The Witness: I believe you asked me about the meeting where we had the election.

Q. (By Mr. Farkas) Who chaired the first meeting? A. Mr. Schwartzmiller.

Q. And can you tell me what Mr. Schwartzmiller said, in substance, to the people attending the meeting that night?

Mr. Gallucci: I will object to that. It is purely hearsay.

Trial Examiner: All right, overruled.

The Witness: Well, all I can tell you is the way I remember it. The way I understood it. That we had a union contract, and he would read it all to us, or read the parts that he had bettered for us, such as wages and seniority—no, seniority was open to bargaining—wages, vacation pay, like that, and time was short that night because he had a liquor license in this place, and we had to be out at twelve.

Q. (By Mr. Farkas) You are now relating what Mr. Schwartzmiller told you? A. He didn't want to read it all. Just the parts. And the girls insisted he read all of the contract, and he read it for us and said there were still

things open for bargaining, the way I understood it, such as seniority, and that's all I can remember about that.

Q. Now, when was the first time that you, as an employee, learned that there was a contract between the company and the IAM? A. The first time I knew anything about it was the night that Donna Munger and Lillie Schaffer come out of the office and told us that's why they had been called in.

Q. Do you recall when that was? A. It was on Monday night.

Q. Do you recall what month? A. In August.

Q. Do you recall the date? A. Not exactly.

Q. What is your best recollection of what the date was?

A. I would say around the 16th.

Q. You are sure that it was a Monday? A. Yes.

Q. And you say that was the first time that you knew there had been a contract signed between the IAM and the company?

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A. Yes, sir.

Q. When was the first time that you knew of the IAM being interested in the plant?

Mr. Gallucci: I object to that as being totally—

Mr. Poulton: It's hearsay.

Trial Examiner: Overruled. I can give you a standing line of objections to this type of material, but it is, I think, admissible examination, under the General Counsel's theory of the case.

I know there is no representative of the company being shown to be present, but you have a standing objection to the entire line.

Q. (By Mr. Farkas) When was the first time that you learned of the IAM's interest in that plant? A. That was the first time I ever heard any thing about any union there.

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Q. Now, prior to that time—I believe you fixed it about August 16th? A. Yes.

Q. Prior to that time will you state whether or not you had ever been approached by any individual representing the IAM? A. No.

Q. Will you state whether or not you ever heard of the IAM prior to that time? A. No, I hadn't.

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Q. Do you know of your own knowledge of any discussion among employees of the plant, with respect to organization by the IAM? A. No.

Q. Can you state whether or not at any time prior to August 16th or thereabouts you had seen any kind of written literature, such as hand bills, posters, or circulars, from the IAM? A. No.

Q. Did you ever see any kind of circular or hand bill or poster or circular from the labor organization at the plant? A. After we were told this union was in, I believe it was the CIO that passed out hand bills.

Q. Do you remember when that was? A. No. It was within a few weeks after we were told we had this contract.

Q. Now, Mrs. Watkins, you testified that you became a member of the IAM? A. Yes, sir.

Q. I believe you said sometime the latter part of August? A. I don't know the exact date. It was whenever we elected officers.

Q. Prior to that time had you ever signed any kind of authorization or designation on behalf of the IAM? A. No, sir.

Q. Now, can you tell me the exact circumstances relating to

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your signing? In other words, who asked you to sign the membership card?

Mr. Gallucci: That is flagrantly leading.

Mr. Farkas: Who asked her to sign?

Trial Examiner: Overruled.

The Witness: I don't recall. I think they were passed out by one of the girls there. I don't know if it was Flossie, or who it was.

Q. (By Mr. Farkas) Where was that? A. At the meeting.

Q. Do you know whether or not at this first meeting at the end of your shift, whether or not there was any discussion with respect to the manner in which the IAM had come into the plant? A. There was discussion in groups of people; I mean one would have their opinion, and others would have theirs.

Q. Were there any questions raised by anyone from the floor, addressing the Chair? A. What sort of questions?

Q. With respect to how the IAM got into the plant? A. I believe there was one.

Q. What was that question? A. Oh, I think she asked them who had asked them to represent the people.

Q. Can you give us the answer that she received?

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A. No, not exactly.

Q. Do you know whether or not she did receive an answer? A. I believe she did.

Q. But you don't recall what it was? A. No.

Trial Examiner: Which meeting was this?

Mr. Farkas: The first meeting, at the end of the shift.

Trial Examiner: Is that correct?

The Witness: Yes.

Trial Examiner: Who did this girl ask the questions to?

The Witness: Mr. Schwartzmiller.

Q. (By Mr. Farkas) Incidentally, Mrs. Watkins, you are appearing here in response to a subpoena, are you not?

A. Yes, sir.

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Q. Prior to August 16th will you state whether or not you had ever been approached by any employee, one of your co-employees, on behalf of the IAM? A. No, sir.

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Cross Examination

Q. (By Mr. Gallucci) Mrs. Watkins, you stated you attended a meeting of August the 16th? A. As I recall, that was the date. It was a Wednesday night, as near as I can remember.

Q. Now, can you, in thinking back to this night, recall approximately how many people were present at that meeting? A. I believe almost everyone on the shift.

Q. Do you have any knowledge of the number of people on the second shift? A. Oh, at that time I think it was only one department. I would say, as near as I can recall, between thirty and forty people. I don't remember exactly.

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Q. You stated—and I quote you—"We were told that this union was in."

May I ask if there were any objections raised on the floor, any objections addressed to the chairman, as to the people not desiring this union to represent them? Desiring no union, or some other union? A. Ruth Moses is the one I distinctly remember.

Q. You said you couldn't remember exactly what—you say there was an answer, but you can't remember what it was? A. Something about her causing a disturbance, and she said she just wanted to ask some questions.

Q. Do you remember what her question was? A. She asked him who had asked him to represent us.

Q. Did she ask him anything else? A. Not that I recall.

Q. Did anyone else ask any similar questions? Any questions at all? A. There were lots of questions asked that night by everyone there.

Q. Raised to the chairman? A. Yes.

Q. A lot of questions. Were there any questions specifically objecting to their being included as a part of this bargaining unit, or as a part of this union? Did people get up and say, "We don't want the union"?.

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A. Well, I think there were several people that felt that way, expressed their feelings that way.

Q. Were you told—let me say this: Isn't it a fact that Mr. Schwartzmiller did tell you people at this meeting you would have an opportunity to accept or reject the proposal that he brought to you? A. The way I understood it, we didn't.

Q. Is it a fact he said that? He said "You people will have a chance to vote on it"? A. Not that I recall. I remember him saying this was the contract, and he read it through, and we objected to him reading it in part, and I remember Donna Munger saying, "You might as well read it all to them or they will not be satisfied until they have heard it", and he said, "There is still things open for negotiation, such as seniority."

Now, that is the way I understood it.

Q. Was there any hand vote or voice vote taken as to whether

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the people did not want to be bound by that agreement?

A. Not that I can remember of.

Q. Not that you remember? A. Not that I remember.

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Trial Examiner: Were there two or three shifts at that time?

The Witness: Two shifts only.

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Q. Were any objections to any provisions of that agreement made? A. Not as I remember.

Q. None at all? A. Other than how did we get the contract.

Q. But there weren't any objections to the contract itself? A. The parts in the contract, no.

Q. Now, you stated that the first time you knew of the contract was, oh, approximately August 16th, when you were told by Lillie Shaffer? A. And Donna Munger.

Q. Just exactly what did they tell you? A. When they came out of the office we all wondered why they had been taken in, because nobody knew why, and they said, "We had a union contract and got a nickel raise retroactive to August 10th."

Q. Did they say anything else? A. Oh, everybody questioned them why they were taken in, who

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chose them, and questions like that.

Q. You say you didn't know of any discussion around the plant prior to August 16th in regard to the IAM, is that correct? A. Yes.

Q. Could there have been discussions that you didn't know about? A. I suppose there could.

Q. You also testified prior to August 16th there had never been any circulars handed out by the IAM? A. Not that I ever had seen.

Q. Could there have been some handed out that you didn't see? A. I suppose.

Q. You say at the first meeting you attended there were discussions in groups, is that correct? A. Yes, sir.

Q. Did you hear any of these discussions? A. Yes, sir.

Q. Did you hear all of the discussions that took place in the groups? A. Not all of them.

Q. About how many discussions did you hear? A. Oh, probably the group that I was sitting in and another group beside us.

Q. What were those discussions, to the best of your recollection?

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A. Some didn't appreciate the fact that we had the union. Some thought we should have had a vote, whether they wanted the union or not.

Q. Anything else? A. Some thought they should have more money, and some were glad to get the nickel.

Q. Did anybody raise an objection on the floor during this meeting, about the union coming in? A. Not that I remember.

Trial Examiner: When were these groups discussing it? Before the meeting, after the meeting, or during the meeting?

The Witness: Some during and some after.

Trial Examiner: All right, go ahead.

Q. (By Mr. Poulton) Now, you say there wasn't any vote taken at that meeting at all? A. Not that I remember.

Q. Could there have been one taken that you don't remember? A. I possibly could have forgotten.

Q. You could have forgotten? A. I don't remember voting on anything at that meeting.

Q. You don't remember. Are you sure there was or wasn't a vote there? A. I don't think that there was.

Q. But you are not sure, is that right? A. Well, I am not positive. It has been two years.

Mr. Poulton: That's all.

Redirect Examination

Q. (By Mr. Farkas) Mrs. Watkins, what is your best recollection as to whether or not there was a vote taken to approve that contract that night, so far as you personally remember? A. As far as I am personally concerned, there wasn't any taken to approve.

Ruth Moses

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) What is your full name, please?

A. Ruth Arlene Moses.

Q. Where do you reside? A. Route 1, Osseo.

Q. Are you employed at the present time? A. Yes.

Q. Where? A. Bell Telephone, in Jackson.

Q. How long have you been working there? A. About six months.

Q. Prior to that time where did you work? A. I had worked at odd jobs, housework, and one thing and another, in between, and previous to that the Bryan Manufacturing Company.

Q. Can you recall when you worked for the Bryan Manufacturing Company? A. July 1st, 2nd, 3rd. One of those days I started.

Q. 1954? A. Yes, sir.

Q. And until when? A. The 17th, I believe it was.

Q. The 17th of August, 1954? A. I am not positive of the exact date, but it was about that, right around the time this trouble arose.

Q. Incidentally, you are appearing here in response to a subpoena, are you not? A. Yes, sir.

Q. Now, do you know, of your own knowledge, of any discussion among the employees in the plant at Bryan Manufacturing while you worked there—

Mr. Poulton: I object. Oh, I am sorry. I thought you had finished.

Q. (By Mr. Farkas)—While you worked there, concerning union organization?

Mr. Poulton: I object to that. That covers too broad a span.

Trial Examiner: I will overrule the objection.

The Witness: At any time I worked there, yes, sir, we had discussed among a few of us having a union, hoping eventually to have one.

Q. (By Mr. Farkas) What union was that? A. CIO.

Q. Do you know in greater particularity the name of the organization? A. The one we had in mind, you mean?

Q. Yes? A. No, sir. I wouldn't. I merely knew that the CIO did have successful unions in the surrounding territory, and that was what we would like.

Q. (By Mr. Farkas) Now, did you, as a result of these discussions, have any meetings with respect to organization by the CIO? A. Yes, sir.

Q. Where were those meetings held? A. Well, the first

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two, or possibly three—I am not sure exactly how many we had—were held at Mary Carter's house in Reading.

Q. Did you attend those meetings? A. Yes, sir.

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Q. Can you recall when those meetings occurred? A. Not on the exact dates. It was sometime around the middle of July, or August, including the time, up to and past the time we were laid off.

Q. And when were you laid off again? A. The 17th, I think it was. I am not positive of the exact date.

Q. Now, did you, as an employee, sign any authorization card on behalf of any labor organization? A. The CIO, yes, sir.

Q. Had you ever signed any authorization card on behalf of any other labor organization? A. No, sir.

Q. During the course of your employment at Bryan Manufacturing Company did you at any time learn of the existence of a contract between Bryan Manufacturing Company and the IAM? A. On the day before—

Q. Did you learn of the existence of such a contract? A. Yes, sir. The day before I was laid off, I think it was, when these ten girls, I believe it was—I am not sure of the exact number—were called into the office, and when they came back they told us we had a union.

Q. Do you recall who was called into the office? A. Not exactly. I just remembered two or three. Jean Edinger, Lola Joice, and one of the Shaffer girls, and I don't

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remember most of them by name. We knew them at the time, of course, as our co-workers.

Q. Did any of those girls work with you or near you?

A. The Shaffer girl was next to me, and Jean and I worked there, the Edinger girl,

Q. Now, do you recall the manner in which they were

told or selected to go to the office? The circumstances?

A. You mean how I was told?

Q. Did you see what the circumstances were of their going into the office? A. No, sir. They were called in individually, they way I understood it.

Q. Do you know who called them in? A. No, sir. One of the company men. I think Mr. McFann, but I am not sure.

Q. Now, you say—strike that. Once again, let me ask you, when did you first learn the fact the IAM had a contract with the company? A. When the girls returned with that news to the machines. I think it was just before the supper break, about six o'clock.

Q. Who, particularly, informed you? A. Jean Edinger, although she only told me just the basic facts, that she had been told not to discuss it.

Q. Now, did you ever attend any meetings of the IAM?

A. The first one, yes, sir.

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Q. Do you recall when that first meeting occurred? A: It was either that first night or the next night. I believe it was on the 17th.

Q. And did you work on the second shift? A. Yes, sir.

Q. Am I correct that you attended, along with Mrs. Watkins, the meeting at the end of the second shift? A. Yes.

Q. You were released a little early to attend? A. Yes.

Q. Who released you to go to the meeting? A: We were told, I believe, by Herman Marsh or Donna Munger. I am not positive which one. But we were told during the supper hour there would be a meeting, and they urged us to attend, even those that were being laid off.

Q. And that was approximately eleven o'clock? A. I think so. I don't recall the exact time now.

Q. And your shift normally ended at one five, 1:05?

A. Yes.

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Q. Now, do you know who chaired that meeting? A. Mr. Schwartzmiller.

Q. Do you recall what Mr. Schwartzmiller told the assembly there that night with respect to the existence of a contract? A. Well, he told us we had one, we had a contract with the company at the time, and I don't know exactly—as Mrs.

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Watkins stated, he did read at least parts of it. I don't know if it was all of it read, or what parts. He did skim over some parts he thought we were not interested in, legal matters.

Q. Did you have any conversation with Mr. Schwartzmiller that evening during the course of the meeting? A. Yes, sir. I resumed a conversation we had previously.

Q. Let's go back to the previous conversation then. When did the previous conversation that you had with Mr. Schwartzmiller occur? A. The same evening that these girls notified us that we had a union.

Q. Where did it occur? A. In the shop.

Q. Was anybody else present? A. The other girls were around their machines. There was no one close, I don't think.

Q. (By Mr. Farkas) Let me ask you a preliminary question. Did you go to Mr. Schwartzmiller, or did Mr. Schwartzmiller go to you?

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A. He came to me.

Q. Did he start the conversation or did you? A. Yes, sir, he introduced himself and told me why he was there.

Q. What did he say to you? A. That he was there in behalf of the girls, to help set up a union, that we could work under, and that he represented what I know now to

be IAM. At the time I had never heard of it, and consequently did not recognize it. We knew it was unusual—I mean, most people know only the CIO and the AF of L. Basically you don't know a lot about other unions, but he said he was a representative of the AF of L, and he had come in there to establish this union.

Q. Now, what, if anything, did you say to him? A. Well, mainly my sole objective was to find out how he had got there and who called him, and as to whether there was anything we could do to stop it.

Q. What did he say? A. That—he said they had been organizing another branch of the company some place else, or they had just finished organizing. I am not sure of his exact words. And that the company had agreed to let them come in here, and they came immediately, rather than try to organize in the usual way, because they figured they would come while the company was in the mood.

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Q. Now, is that, in substance, your conversation? A. Yes.

Q. Prior to that date on which you had your conversation with Mr. Schwartzmiller in the plant, will you state whether or not you had even seen him before? A. I had never seen him nor heard of him.

Q. Prior to the day which you have mentioned as August the 16th, on which you learned of the IAM's existence in the plant, had you ever heard of the IAM before? A. No, sir.

Q. Will you state whether or not prior to that time you had ever been approached by any representative of the IAM? A. Absolutely not.

Q. With respect to signing authorization cards? A. No, sir.

Q. Will you state whether or not you ever did sign an authorization card for the IAM? A. No, sir.

Q. Prior to this time will you state whether or not you

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had ever seen any hand bill or poster or circular from the IAM? A. None whatsoever.

Q. In the factory? A. No.

Q. Will you state whether or not any other employee had ever shown you such a poster, circular or hand bill?

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A. No, sir. They would have been afraid to.

Mr. Gallucci: I move that last remark be stricken from the record.

The Witness: They told us they were. I heard it.

Trial Examiner: The record may stand.

Mr. Gallucci: I beg your pardon?

Trial Examiner: I will let the record stand.

Q. (By Mr. Farkas) Did Mr. Schwartzmiller, during the course of this conversation—this first conversation with him in the plant—say anything to you with respect to the existence of a contract with the company? A. Yes, sir. He said they had a contract. I asked as to how they could have a contract without the girls' permission. I never did get a straight answer to that.

Q. Now, you say that there was a second occasion on which you had some conversation with Mr. Schwartzmiller, and that was at the first meeting? A. That's right.

Q. What were the circumstances surrounding or relating to that discussion? How did it start? A. Again he asked if there were any questions. Not again. I should say he asked if there were any questions, and again I produced the same questions I had in the shop.

Q. What did you do? A. I asked for the floor, and received it first for two or

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three questions, which I wished answered, but I never did get a direct answer.

Q. What were those questions? A. The same thing.

How they came up there, or who had called them, and how they got in at all.

Q. What did Mr. Schwartzmiller say by way of answer?

A. Well, the same story. They were doing us a great favor, that the company was allowing us to have a union, and they were it.

Q. Well, specifically—if you can recall—what did Mr. Schwartzmiller say in direct answer to your question as to how they got in the plant? A. That they had been organizing in another branch and that the company had agreed to allow them to come into this plant and they decided to come while the company was in the mood.

Q. Now, did you ask him any other questions? A. I asked him whether it was all cut and dried, whether there was anything we could do about it. He said it was all done. We couldn't change it. He said there were some openings left, such as the girls mentioned, on wages, and seniority, and a few things like that, which seemed to me to be the basic things a contract should originally be written on.

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Q. Did Mr. Schwartzmiller say how the contract had been effected or entered into? What the circumstances were?

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A. He and the company, together, had drawn up what you might call, I suppose—I believe he referred to it more or less as a skeleton contract, leaving these openings for the girls to adjust later.

Q. "These openings." What are you talking about? What do you have reference to? A. On seniority and wages. I don't know whether that was the only thing. I wasn't there to see what was added later, and I don't

know just what that was, but he did say they could be altered, but still the original contract was signed.

Q. Were you present during the whole meeting? A. Yes, sir.

Q. From beginning to end? A. Yes, sir.

Q. Can you recall whether or not the employees present that evening at the meeting heard the entire contract read to them? A. Well, they heard as much as he read. I never did know whether it was all of the contract or not. They had no copies for us to look over, or anything of that sort.

Q. Do you recall whether or not there was any vote taken that night of any kind? A. Yes, I believe they nominated some representatives from the second shift to be voted on later for officers, and I think they also nominated some representatives to be stewards, I think.

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Q. Was there any vote taken, to the best of your knowledge, with respect to the contract? A. Well, no, sir. According to him we had no choice.

Q. Mrs. Moses, did you attend any further meetings? A. No, sir. We were barred from the rest of them. In fact, I would have been barred from that one, except I finally hushed up and listened, but he would not let me have the floor; that is, to ask a question at all. He said I was trying to break the meeting up, just because I asked questions, and that is when some of the girls—I can't tell you which ones—but some of them did feel we had a right to those answers which I had asked, only what they all wanted to know.

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Trial Examiner: Do you recall now whether the final night which you worked was the night of this meeting you just testified about?

The Witness: Yes.

Trial Examiner: Or was the meeting the night before?

The Witness: Oh, gosh, I think that it was the 17th. I have not a very good memory, as far as the date. The only reason I remember the association was because of the layoff at the same time. I think the meeting was the last night.

Trial Examiner: See if you can recall. Think back and see if you can recall whether you knew you were laid off at the time of this meeting, or you didn't know yet?

The Witness: Oh, yes. We knew that, because it was coming

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up. We had been laid off the week before.

Trial Examiner: You had been told?

The Witness: We were expecting it, but of course not a permanent layoff.

Trial Examiner: You can't remember now whether the meeting was the same night you were laid off? Are you sure you were laid off on the 17th? Are you sure of that?

The Witness: Yes, sir. Reasonably sure of that.

Trial Examiner: Now, what is your best memory as to whether the meeting was upon the same night you were laid off, or the night before?

The Witness: The 17th, that would have been our last night.

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Cross Examination

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Q. In what way? I ask you specifically now to point out on what premises you base your conclusion that the company had knowledge. A. Well, there was one of the

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company men watched us at one of these meetings. I do know that.

Q. Did he know what was going on inside? A. I think he did.

Q. Was he there— A. We felt he was there to see.

Q. Outside what meeting?

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A. I don't even remember.

Q. Was this meeting held in a public place? A. Yes.

Q. You feel the company stationed a man out there to observe these meetings? A. I don't know whether they stationed him there. He was there, period. That's all I know.

Q. He was watching you girls come up? A. He was watching, definitely. He wasn't missing it.

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Q. (By Mr. Poulton) These several meetings you had at which you discussed the CIO, which CIO union did you discuss? A. That's what I said. As far as any definite number or name, I don't know.

Q. Didn't you discuss the UAW, actually? A. Yes. UAW-CIO. That's right. I didn't know what you meant.

Q. That's what I meant. A. Yes, sir, that's right.

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Q. (By Mr. Poulton) Now, on the 16th of August you talked with Jean Edinger? A. Yes, sir.

Q. Exactly what—is it Miss or Mrs. Edinger? A. Mrs. Edinger.

Q. What did Mrs. Edinger tell you? A. She came dancing out—which everyone will understand—and said, "We have a union".

Q. Is that all she said? A. I asked her which one. I was rather excited, as she was, and when she told me I said, "Oh, no", and she said, "What's the matter?" and I said that she knew—she had been to a meeting, and she knew we were talking union. She knew, no different than any of us. She said she thought they were all alike.

Q. Did she say anything else? A. That they weren't supposed to discuss it with us at the time, which they proceeded to do thoroughly.

Q. What else did she discuss with you? A. She didn't. I mean later the rest, the whole group, the whole factory group.

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Q. What else did Mrs. Edinger say to you? A. That she had been called in there unbeknowing of the reason why, and she and several other girls who she had talked with were frightened at the idea of being called in, not knowing why, and when they had gotten in there Mr. Schwartzmiller had either introduced himself or had been introduced to them, and they proceeded—the company or Mr. Schwartzmiller—proceeded to present the contract.

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Q. I believe you said at one time that Mr. Schwartzmiller said you were trying to break up the meeting? A. Yes, sir, when I persisted in asking him—I felt I had a right to the answer, and he then got up and said that he had been warned that the meeting would be broken up, and he would not stand for it, and if I was asking questions just merely to upset him that I wasn't going to accomplish it, and I assured him I was interested.

Q. Weren't you trying to break up the meeting? A. No, sir. Absolutely not. What would be accomplished?

Mr. Farkas: Mr. Examiner, I don't see the purpose of

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Mr. Poulton arguing with this witness. She has answered that question quite clearly.

Trial Examiner: That was permissible cross examination. Overruled.

Q. (By Mr. Poulton) Did you say you talked to Mr. Schwartzmiller on August 16th? A. Yes.

Q. Where did this conversation take place? A. At my machine.

Q. Where is your machine? A. The second one in the row of what they call crimpers.

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Q. How close is the nearest person working to you? A. Five, six, seven feet. I don't know. The width of the machine and room for our chairs.

Q. At the time you were talking to Mr. Schwartzmiller was there anyone near you? A. Not that I know of, other than the girls on the next machine, and with the machines running they might not hear.

Q. You couldn't hear with the machines running, is that correct? A. No, sir.

Q. Isn't it true the crimpers are at least ten feet apart? A. They might possibly be. I don't know exactly.

Q. What did Mr. Schwartzmiller say when he came up to you? A. He introduced himself.

Q. Who did he say he was? A. Mr. Schwartzmiller, and he was representing IAM-AF of L union. He understood that I wasn't—whether his words were that I wasn't exactly pleased or wasn't contented with the situation, I don't remember, but something of that line.

Q. What did you say? A. I told him it was merely the way they had come in that I questioned, and did that.

Q. Those are the exact words you used? A. Yes.

Q. Now, what did he say?

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A. He explained that they had been organizing or had finished organizing another branch of the company, and that they had been allowed by the company to come into this one, the Reading plant, and he figured he should take it up immediately, while they were in the mood.

Q. Did he say what plant he had finished organizing?

A. No, sir, he never did. He said another branch of the company.

Q. Did he say where? A. No, sir.

Q. What did you say? A. I asked him who asked him in, which, as I said, he was giving me the same thing over again. They were allowed to come in by the company; but as to who definitely asked him, he never did give me a definite answer.

Q. Did he tell you he had a contract at that time? A. Yes, sir, I think he did.

Q. Did he say he had a signed, executed contract? A. I asked him if it was all signed, if there was nothing we could do about it.

Q. What did he say? A. He said there was.

Q. There was something you could do? A. No, that it was all signed.

Q. Well, you went to the meeting, you said, of August 17th

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A. Yes.

Q. Wasn't there discussion of provisions of the contract that night? A. Yes, and he said that they had left open—that's what I couldn't understand—how any contract would be signed, because it was—how any contract could be signed until it was completed in full, but I thought it was possible there was such a thing.

(283)

Q. At that meeting did he say the contract was signed?
A. That's the way I understood it.

Q. What did he say? A. Well, I asked him if there was anything we could do, if it was too late to do anything, and he said it was all signed, that they could alter these facts they had left open.

Q. What did he say they had left open? A. Seniority, wages.

Q. Anything else? A. Not that I remember definitely.

Q. You mean there were some other issues left open?
A. I don't know. I said I had never seen the contract.

Q. Now, I believe at one time you, in your testimony—I may be wrong about this—but I believe you stated that Mr. Schwartzmiller said that he and the company had a skeleton contract? A. I used that word. I said I don't know what word he used,

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but it was a basic contract to work on.

Q. To work on? A. That was the idea of the thing, the impression he gave us, that these points were left open for them to adjust later. One minute he said it was all signed and completed, and the next minute he said there were things to be adjusted in it.

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Trial Examiner: You were asked if anyone had ever showed you any literature from the IAM, and you said no, that they would have been afraid to. Why did you make that statement?

The Witness: All the girls, I think, will admit it. They all talked the same way. They were afraid to talk union of any kind.

Trial Examiner: That's all I want to know. In other

words, it was a question you feel they were afraid to talk union to anybody?

The Witness: That's right. To anyone.

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William V. Nichols

a witness called by and on behalf of the General Counsel, being

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first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Will you state your full name, please? A. William V. Nichols.

Q. Where do you live, Mr. Nichols? A. Route 1, Osseo.

Q. Are you employed at the present time? A. I am.

Q. Where are you employed? A. Allied Products, plant 3.

Trial Examiner: How do you spell your last name?

The Witness: N-i-c-h-o-l-s.

Q. (By Mr. Farkas) Will you state whether or not you have ever met or had any conversation with Mr. E. L. Schwartzmiller of the IAM? A. I did.

Q. Can you recall approximately when that conversation occurred? A. Oh, it was sometime in August or September. I couldn't say the exact date. 1954; a year ago.

Q. Where did that conversation take place? A. Outside of the American Legion hall in Reading.

Q. What time of day did that conversation take place? A. Oh, it must have been about four-thirty. Four or four-thirty. I couldn't say exactly.

Q. Who was present during that conversation?

A. Well, there was the IAM representative—oh, five or six.

Q. When you say the IAM representative are you speaking of Mr. Schwartzmiller? A. Mr. Schwartzmiller.

Q. Who else? A. Oh, four or five of us other fellows.

Q. Can you name those four or five? A. Ray Zider, William Burger, Kenneth Carter and myself.

Q. Were you there individually or were you there as a group? A. We were there as a group.

Q. Will you state what the purpose was for your being there? A. We were sent over there to find out what was going on at Bryan Manufacturing Company.

Q. Sent over by whom? A. By the organizer for the CIO, and the president of the local here in town.

Q. What was his name? A. The International?

Q. No, the organizer. A. The organizer for the CIO? Robert McClain.

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Q. (By Mr. Farkas) Now, who started the conversation between Mr. Schwartzmiller and the group? A. I think one of our group.

Q. Do you recall what was said? A. We introduced ourselves and told him who we were, and he introduced himself, and we asked him what was going on, if he could enlighten us on it.

Q. I beg your pardon? A. We asked him if he could enlighten us on what was going on.

Q. What did he say? A. Well, he said they had just had a meeting, and the IAM had a contract in the plant.

Q. Will you continue to tell me the conversation that took place between Mr. Schwartzmiller and your group, and what each said? After he told you that, what did you

say, or anyone in your group say? A. Well, as near as I can, I can't make it word for word—

Q. To the best of your recollection, Mr. Nichols? A. Well, he said he had a contract, and we asked him how he got the contract.

Q. What did he say?

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Q. (By Mr. Farkas) Will you continue, Mr. Nichols?

A. And we asked him if he didn't know the CIO had cards signed in the plant. I think he said he did; and we asked him about a non-raiding pact between the two unions, and what was the idea of coming in. We accused the man of—it was a heated discussion, which sometimes arises between two unions. We accused the man of coming in the back door, and finally—

Q. What did Mr. Schwartzmiller say to that? A. Well, he wouldn't deny or confirm it. He wouldn't say, and finally we asked him just how they get away with that, and I can remember his answer. He said, "If you can get away with it you just get away with it." And it was that line of conversation all of the way through, about thirty minutes.

Q. Can you recall anything else that he said? A. We asked him where he was from, after we sort of cooled

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down, the argument, and he said he was from Ohio, which we knew he had an Ohio license on his car, and he told us that he had just negotiated a contract for another part of this company. If I remember rightly, he said Mansfield, Ohio, and was sent up here. How the two got tied together, we didn't know, didn't care. The conversation finally ended up, well, we said, "The two International unions will have to fight it out," and we came back to Hillsdale.

Q. Was that the end of the conversation? A. Yes. We just came back to Hillsdale.

Mr. Farkas: No further questions.

Cross Examination

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Q. Again I say you had a rather heated argument with Mr. Schwartzmiller? A. That's what you are saying.

Q. Isn't it a fact you did accuse him of coming in the back door?

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A. Sure we did.

Q. What evidence did you have at that time that he had come in the back door? A. Well, there was a non-raiding pact between the two unions—

Q. Isn't it a fact that you didn't—

Trial Examiner: Let the witness finish his answer.

Mr. Gallucci: He is going into the non-raiding pact.

Trial Examiner: You asked him a question, and I will rule that as a proper answer to your question. Finish your answer.

Mr. Gallucci: My question was what evidence did you have he was going in the back door?

Trial Examiner: Go ahead and answer.

The Witness: There is a proper way to organize a plant, and there is an improper way. We knew the proper way; and the way this come up, it didn't look proper to us, according to the law.

Q. (By Mr. Gallucci) You didn't have any evidence as to how this had happened? That's why you were down there? You were down there to find out, weren't you?

A. Yes.

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Q. Your boss didn't have any information as to how this had happened, isn't that true? A. He didn't relay it to us.

Q. As a matter of fact, he sent four men down there to talk.

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with one man, and find out, isn't that true? A. Yes.

Q. And before you found anything out you assumed and accused him of having come in the back door, isn't that true? A. The man didn't deny it.

Q. (By Mr. Gallucci) You say Mr. Schwartzmiller said he had been organizing another branch of this company in Mansfield, Ohio, is that correct? A. I said I wasn't sure that was it, but I am pretty near positive it was.

Q. Are you sure of anything you have told us here today? A. Mister, I wouldn't say it if I wasn't.

Mr. Gallucci: That's all.

Q. (By Mr. Poulton) Mr. Nichols, you mentioned that the problem would have to be taken up between the IAM and the UAW—the UAW and IAM no-raiding agreement? A. I don't understand what you mean. You mean it would have to be settled?

Q. The problem, yes.

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A. It would have to be settled.

Q. Do you know if that was taken up on that agreement? A. It was.

Q. How was it settled, if it was? A. After that the CIO dropped out.

Q. So would you say, sir, that the CIO agreed that the IAM came in properly? A. I never heard them agree to

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the fact they came in properly, but we were notified to drop the matter.

Mr. Poulton: That's all.

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William Burger

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you reside, Mr. Burger?

A. Route 2, Osseo, Michigan.

Mr. Poulton: What is your first name?

The Witness: William.

Q. (By Mr. Farkas) Where are you employed? A. Allied Products, plant 3.

Q. You are here in response to a subpoena served upon you? A. Correct.

Q. Was that subpoena served upon you yesterday? A. That's right.

Q. And was Mr. Nichols also present? A. That's right.

Q. Did he receive a subpoena? A. That's right.

Q. Now, have you been present in this court room throughout the entire testimony of Mr. Nichols? A. I have.

Q. And have you heard and understood Mr. Nichols' testimony? A. I have.

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Q. Will you please state whether or not there is anything additional or that you care to add or anything you wish to modify?

Mr. Gallucci: I would object to that.

Trial Examiner: I will sustain the objection. Let the witness give his own memory of the incident.

Mr. Farkas: All right.

Q. (By Mr. Farkas) Mr. Burger, did you ever have any conversation with Mr. Schwartzmiller? A. I did.

Q. Do you recall when the conversation occurred? A. Well, it was in the middle of August, I believe, after a meeting at the American Legion in Reading, a meeting of the Bryan Manufacturing employees.

Q. I believe you have answered that it was at a meeting at the American Legion hall? A. That's right.

Q. Was that in Reading, did you say? A. That's right.

Q. Do you recall the time of day? A. Oh, I would say it was approximately four-thirty.

Q. And who was present during the course of that conversation? A. Well, there was Ray Zider, the first vice president of Local 701; William Nichols, recording secretary of Local 701; and myself, as financial secretary of Local 701; and Kenny

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Carter.

Q. Do you personally know and are you acquainted with all of those men? A. I certainly am.

Q. Do you work with those men? A. Pardon?

Q. Do you work with those men? A. I do.

Q. Now, can you state the reason for your being in Reading at the American Legion hall that day? A. We was sent to Reading by the International Organizer of the UAW-CIO, and the president of our Local 701.

Q. And will you state the purpose of sending you there? Did you know? A. We were sent there to find out what was going on. We had heard they was calling a meeting and we felt that we should know, because we had cards

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signed up over there. We started signing cards, I believe, the latter part of July.

Q. Now, will you relate the conversation between Mr. Schwartzmiller and your group, indicating what was said, and by whom? A. Well, he come out of the American Legion, and he stood there on the sidewalk, and we went up to him and introduced ourselves, and he introduced himself, and we started in a conversation. We asked him what was going on, and he told us that they had had a contract or got a contract with the Bryan Manu-

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facturing Company, and as the conversation went on, somebody—I don't remember who it was—asked him if he knew there was a non-raiding agreement between the UAW-CIO and the ~~AF~~ of L, and he said he did, and I believe I was the one that spoke up and asked him how he got away with it, and he said, "Well, if you can get away with it, you get away with it."

Q. Was there anything else said, either by anyone in your group or yourself or Mr. Schwartzmiller? A. Somebody in the group accused him of a back-door deal, and he didn't deny it or confirm it.

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Kenneth Carter

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Mr. Carter, where do you live? A. Reading.

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Q. Where are you employed? A. Allied, plant 3.

Q. Are you a member of a labor organization? A. Yes.

Q. Which one? A. CIO.

Q. How long have you been a member of the labor organization? Which particular International? Of the CIO?

A. Local 701.

Q. UAW? A. Yes.

Q. Have you ever had any conversations with Mr. E. L. Schwartzmiller?

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A. No.

Q. Were you ever present at any time when a conversation was had? A. Yes.

Q. With Mr. Schwartzmiller and any other individual?

A. Yes.

Q. Where did that conversation take place? A. At the American Legion hall.

Q. Where? A. Just on the outside.

Q. What city? A. In Reading, Reading.

Q. Who was present? A. Bill Nichols, Bill Burger, Ray Zider and myself.

Q. I believe you stated you personally did not have the conversation? A. No.

Q. Do I understand you to say, then, you did not enter into the discussion? A. No, I was more or less curious what the outcome was.

Q. Will you please explain how you got there? Why you were there? A. I was interested. I wanted to see what the deal was. I knew that our committee was going over, so I went over.

Q. As I understood you, you were not an officer?

A. No.

Q. Now, to the best of your recollection will you relate what you heard in that discussion between Mr. Schwartzmiller and the group, stating who said it, and what?

Mr. Gallucci: Again I will put in my objection as being hearsay, Mr. Trial Examiner.

Trial Examiner: The objection is overruled.

The Witness: What was your question?

Q. (By Mr. Farkas) The question was will you please state what you heard, indicating who made the statement, and what was said. A. About the time that I got there—

Q. Before you answer, do I understand from the beginning of your answer here, that you were not there at the beginning? A. No, not at the beginning.

Q. When you got there the conversation or discussion was under way? A. It was under way, yes.

Q. All right, will you pick up from there? A. I heard—I can't recall which one—but one of them asked how they could come into the plant while the CIO had been working, and, well, he said—

Trial Examiner: Who was being asked that question?

The Witness: Mr. Schwartzmiller.

Trial Examiner: Did he make any answer?

The Witness: Yes.

Trial Examiner: Use the names of the individuals, please. Make it clear who you are talking about.

The Witness: Mr. Schwartzmiller said, "It is who you know, and if you can get away with it".

Q. (By Mr. Farkas) Can you relate anything else that was said? A. No, they asked him where he was from. He told them he was an organizing—that he had been

organizing some plant in Ohio—but I can't recall what the plant was.

Q. Can you recall any other portions of the discussion that you heard while you were there? A. Well, that's about all. It was pretty well over with.

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Everett Hubbell

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Mr. Hubbell, where do you live? A. Reading, Route 2.

Q. And are you employed at the present time? A. Yes.

Q. Where are you working? A. Bryan Manufacturing Company.

Q. How long have you worked there? A. I have worked there two days over a year.

Q. Are you now a member of any labor organization in the plant? A. Yes.

Q. Which one? A. The International Machinists.

Q. Do you hold any office? A. Yes.

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Q. Which one? A. Committee.

Q. You are a committeeman? A. That's right.

Q. For how long have you been a committeeman? A. Since February, last February.

Q. February, 1955? A. Yes.

Q. As a committeeman do you attend membership meetings? A. Those that I have been asked to.

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Q. Is it necessary for you to have permission to attend a general meeting? A. Permission? What do you mean?

Q. A general meeting. Can't you attend a general meeting, as a member? A. Yes.

Q. Now, do you, as a committeeman, attend any other meetings other than general meetings? A. No.

Q. Are you a member of the Executive Committee? A. I considered I was.

Q. Do you have any executive committee meetings? A. Yes.

Q. Now, are these apart from the general membership meetings? A. Yes.

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Q. And who was present at these Executive Committee meetings? A. Well, Cederquist, Schwartzmiller.

Q. Who is Cederquist? A. International Representative.

Q. Do you know his first name? A. Carl.

Q. Who, among the employees, are present at that executive committee meeting? A. The stewards, chief stewards, committee, secretary, president.

Q. During the course of these committee meetings, since you have been committeeman, have you ever had any conversation with either Mr. Schwartzmiller or Mr. Cederquist, with respect to how the IAM got into the plant? A. Yes.

Q. With which one? A. Both of them.

Q. Can you recall approximately when those conversations took place? A. Oh, back in June of this year—July.

Q. Who was present during the course of that conversation? A. The executive board.

Q. Will you relate that conversation? You said it was with Mr. Schwartzmiller and Mr. Cederquist? A. Both of them explained it.

Q. Will you explain that conversation, and tell us what was said, and by whom?

Mr. Gallucci: Mr. Trial Examiner, unless this witness engaged in this conversation I would like to object to it as being hearsay and certainly not within the knowledge of the company.

Trial Examiner: I will give you a standing objection to this line of examination. Overruled. Proceed.

The Witness: They endeavored to explain.

Q. (By Mr. Farkas) When you say "they" who are you speaking of? A. The International Machinists' Union.

Q. Specifically what man? A. Well, Schwartzmiller. They endeavored to explain that—

Q. Mr. Hubbell, I don't like to interrupt you when you are testifying, but it is necessary for you to indicate who the speaker is by name, so when you say that somebody said something will you please tell us who it was that made the statement? A. Mr. Schwartzmiller said the way they came in to having a union, getting a contract in the Bryan Manufacturing Company at Reading, that they had a company of the same—Essex Wire—connected with the company—had them over the barrel, and they was on strike or something down there, down in Ohio, and they told them that they would have to let them come in up here.

Q. Was anything else said? A. Was anything said by anyone else on that?

A. Well, general conversation.

Q. What was that general conversation? A. They wanted to get it across, that they came in legal. That's what they were trying to get across to us.

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Q. Now, you said that Mr. Cederquist said something?
A. He went through the same procedure.

Q. Do you recall anything else that was said? A. No.

Q. You do not? A. No.

Mr. Farkas: No further questions.

Cross Examination

Q. (By Mr. Poulton) What local do you belong to?
What local lodge? What local lodge in the IAM do you
belong to? A. 1424.

Q. How long have you belonged to Local 1424? A. About
the 15th of December.

Q. Since the 15th of December? A. Of '54.

Q. How long have you been working at the Reading
plant? A. Since the first day of November of '54.

Q. How often does the local have a membership meeting,
sir? A. Twice a month.

Q. Are they regularly-scheduled meetings? A. The first
Monday and the third Monday.

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Q. Can any member attend? A. Any member can attend.

Q. How many meetings have you attended? A. I guess
I have attended all but one or two.

Q. And you are on the executive committee? A. That's
right.

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Q. What did Mr. Schwartzmiller say? Now referring
to the general meeting that you referred to in the latter
part of your testimony, what did Mr. Schwartzmiller say
at that meeting? A. Well, it had been—you know, it
was rumored about that the union didn't come in right,
and some of the employees—

Q. That's what Mr. Schwartzmiller said? A. No, he didn't say that. He was trying to prove—

Q. I am not asking you, sir, what he was trying to prove. I am asking you exactly what Mr. Schwartzmiller said, to the best of your knowledge. A. He said the way the union got in there they had the company over a barrel.

Q. That's the exact words Mr. Schwartzmiller said? A. As I remember it.

Q. How is it, sir that you can remember exactly what Mr. Schwartzmiller said, but you can't remember the date of that meeting? A. Well, the time didn't mean anything.

Q. Time didn't mean anything? A. Oh, no. Time didn't.

Q. Now, let's go back to that executive board meeting that you testified to, where Mr. Schwartzmiller was present and Mr. Cederquist wasn't present, and that was in August, you said,

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I believe? A. August, July.

Q. Do you know the purpose of that meeting? A. Yes, to get the point across how this union got in the plant.

Q. That was the purpose of the executive board meeting? A. That was just about the point of it.

Q. Who told you what the purpose was, sir? A. Well, that was my impression of it.

Q. Do you remember what was discussed at that meeting? A. Yes, it was discussed on that general line.

Q. What general line? A. How the union got in the plant, and—

Q. Anything else discussed? A. Not too much, I don't believe.

Q. What else? A. Not too much else.

Q. Do you remember what else was discussed? A. Well, I brought up the point the contract wasn't what it

should have been.

Q. You brought that up? A. Yes, in several places.

Q. Who did you address your remarks to? A. Mr. Schwartzmiller.

Q. What did Mr. Schwartzmiller say? A. Well, he said it was a lot better than it was before the union got in there.

Q. Did he say anything else? A. No, and I didn't say too much.

Q. Did Mr. Schwartzmiller say anything else? A. Oh, yes. He talked.

Q. What did he talk about? A. Oh, about the general line that he wanted to get it across to us how the company—how the union got in, and that was about his discussion. He said they were on a strike down at Lancaster, or somewhere down there, and they had the company over a barrel.

Q. Did he say who was on strike down at Lancaster? A. I guess that—

Q. I am not asking you what you guess. I want to know if he said anything. A. He said they had a contract there, or something like that.

Q. Where? Did he say where? A. I should say he said Lancaster.

Q. Did he say what plant? A. No, he said the same. He didn't say just what the name of the plant was, but it was Essex Wire.

Q. Now, do you remember the exact words? Do you remember the exact words Mr. Schwartzmiller used when he was describing how he got into the plant? A. The only thing I know, he said—

Q. These are his exact words, now? A. That's the way he stated them.

Q. How did he state them? A. That they had the company over the barrel.

Q. Did you say anything to that? Did you answer that? A. No, I didn't say anything.

Q. You still don't remember the date of the meeting, is that right? A. No, I don't.

Q. Now, sir, I would like to ask you a question. How can you remember—how is it you can remember what Mr. Schwartzmiller said, and yet you can't remember the date of that meeting? A. Well, the point is, that was the general discussion at that time, how—if the union did come in the rightful way—and that was the point of discussion, and as far as the day, the time, I just don't know, but that was the—

Q. What brought that back to your mind, and you can't bring back the date?

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A. Well, they—they—the girls had been attending some of our meetings, and some of the girls didn't like it. We were seeking advice. That's what they were seeking. They were seeking advice.

Q. You say the girls were attending the meetings. What do you mean by that? A. They were seeking advice on the matter, working conditions, and what they should do about it in the plant there.

Q. Who was seeking advice, sir? Who? A. Well, there was—even I was.

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Mary Carter

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) What is your address? A. 116 Anne Street.

Q. You are employed at the present time? A. Yes.

Q. In view of the fact the room is large and the reporter has to hear you and the examiner and the rest of us, will you try to speak up as loudly and as plainly as you can? A. All right.

Q. Where are you working? A. At the Fifty-Plus-Five, at West Unity, Ohio.

Q. The name of the company is the Fifty-Plus-Five? A. That's right.

Q. Prior to that time, prior to the time you began working there, where were you employed? A. At Bryan Manufacturing Company in Reading, Michigan.

Q. Incidentally, are you appearing here in response to a subpoena? A. I am.

Q. When did you first begin working at Bryan Manufacturing Company?

A. November 22nd, '54. That is the approximate date, anyway.

Q. November? A. Yes.

Q. When were you laid off at Bryan? A. I think it was around the 12th of August, of '54.

Q. Now, Mrs. Carter, take a moment and refresh your recollection. In view of your statement you were laid off sometime in August of '54 would you still say that

your employment began in November? A. Of the same year, yes, of '54.

Q. I think you are—

Trial Examiner: Did you get laid off before you started work or after?

The Witness: I was laid off from Bryan Manufacturing in Reading, Michigan 'around August the 12th, of 1954. The same year I went to work in November.

Q. (By Mr. Farkas) You mean the same year you went to work at Fifty, in November? A. November comes after August.

Trial Examiner: Did you go to work for the present company in November?

The Witness: Yes.

Trial Examiner: When did you go to work at Bryan?

The Witness: I see. I am sorry. I didn't understand.

Trial Examiner: All right, let's go ahead.

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Q. (By Mr. Farkas) When did you first begin working at Bryan? A. Bryan Manufacturing Company? I think the 11th of July.

Q. 1954? A. 1954.

Q. You worked there until sometime in August, 1954? A. That's right.

Q. So that you worked at Bryan Manufacturing Company a little over a month? A. That's right.

Q. Do you recall whether or not at the time you were laid off it was an individual layoff, or was it a general layoff, or what? A. I believe there were twenty-one girls laid off.

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Q. During the time that you were employed there were you ever approached—state whether or not you were ever approached by any representative of the IAM. A. No.

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Q. Were you ever approached on behalf of the IAM by any employee? A. No, I wasn't.

Q. State whether or not you ever had any discussion or entered into any discussion with any representative of the IAM. A. No, I never did.

Q. During the time you were working there? A. No.

Q. During the time that you were working there did you personally ever receive any circular or hand bill or poster from the IAM? A. No, I didn't.

Q. During the time that you were employed at Bryan will you state whether or not you ever signed an authorization card on behalf of the IAM? A. No, I didn't.

Q. Mrs. Carter, will you state whether or not you ever signed any authorization card on behalf of any labor organization during the course of your employment? A. Yes, I did.

Q. With what labor organization?

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A. With the UAW-CIO.

Q. And where did you sign that authorization card? A. In my own home.

Q. Can you state when you signed that card? A. That was during the week following my employment.

Q. During the week following your employment? A. That's right.

Q. Will you state whether or not you ever participated in any manner in any organizational activity on behalf of the UAW-CIO at the Bryan Manufacturing Company?

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A. I did.

Q. When was that? A. That was during my employment there.

Q. Can you recall approximately when or exactly, if you can, when that first occurred?

Mr. Gallucci: I will object to this testimony as to her organizing activities in that plant as being irrelevant and certainly not with any knowledge of the company.

Trial Examiner: You can have a standing objection to the line of examination. I will overrule the objection. Answer the question.

The Witness: I have forgotten it.

Q. (By Mr. Farkas) The question related to the time when you began organizing. A. It was during the week following my employment. Not the week. The first week. But during the second week, beginning the 17th.

Q. Did you attend any meetings among the UAW-CIO—
A. Yes.

Q. —advocates? A. Yes.

Q. Where were those meetings held? A. We had three meetings in my home, and one at the VFW hall.

Q. Do you know or can you recall who called those meetings? A. I believe I was the one that called the meetings.

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Q. Can you recall approximately how many meetings you held at your house, your home? A. We had approximately three meetings at my home before we had any knowledge of any contract or any negotiations for a contract. We had one afterwards.

Q. Now, were you employed at the plant at the time—strike that. During the time you were employed at the plant were you ever notified by anyone from Management, or did you learn from any other source, the signing of the contract between the Bryan Manufacturing Company and the IAM? A. No, I didn't.

Q. Can you recall approximately how many employees attended the meetings at your home, the general number?

(358)

A. Oh, they varied. Sometimes we would have around seven or eight. We have had, I believe, as high as twenty at one time.

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Maryalice Mead

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you live, Miss Mead? A. 5 East Hallett Street.

Q. Are you employed at the present time? A. Yes, I am.

Q. Where are you working? A. Fifty-Plus-Five Corporation in West Unity, Ohio.

Q. How long have you worked there? A. Approximately three and a half weeks.

Q. Prior to that time where were you employed? A. I was with the Bryan Manufacturing at Reading, Michigan.

Q. When did you first begin working for Bryan Manufacturing Company in Reading? A. November 21st of 1953.

Q. And when was your employment terminated, or when did you terminate your employment? A. You mean in Reading?

Q. Yes. A. I believe it was the morning of—I couldn't say for sure.

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the exact date.

Q. Well, as nearly as you can recall. A. Approximately the 9th or 10th, I believe.

Q. Of what month? A. October.

Q. Approximately the 9th or 10th of October?

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Trial Examiner: What year?

The Witness: '55, sir.

Q. (By Mr. Farkas) Were you laid off or did you quit or how did your employment cease there? A. I quit, sir.

Q. So that you worked there from November of 1953 until sometime in October of 1955? A. Yes, sir.

Q. Were you employed and working at the plant most of the time or all of the time, or what is the situation with respect to that?

Mr. Poulton: I object to this. I can't see the relevancy of this.

Mr. Farkas: May she be permitted to answer?

Trial Examiner: I think she may answer.

Mr. Gallucci: What was the question again?

Trial Examiner: The question has to do with how steady her employment was.

Mr. Farkas: That is correct.

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Trial Examiner: Did you work steady during this period?

The Witness: Yes, I worked steady, up until the first of the year, and then I had sickness.

Q. (By Mr. Farkas) That is the first of the year, 1955? A. Yes.

Q. During the year 1954 you say your work was steady? A. Yes, I believe so, as far as I know.

Q. Miss Mead, when did you first learn of the existence of the International Association of Machinists in the plant?

A. Approximately the 16th or 17th of August, in '54.

Q. Prior to that date, the 16th or 17th of August, 1954, were you ever approached by anybody from the IAM in the plant? A. No, sir.

Q. Were you ever approached by the IAM or any of its representatives anywhere? A. No, sir.

Q. Were you ever approached by any employee on behalf of the IAM? A. Before—

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Q. Prior to August 16th or 17th? A. No, sir.

Q. With respect to that same date, will you state whether or not you ever saw or received any literature such as handbills, posters or circulars from the IAM? A. I never received any literature whatsoever, sir.

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Q. Will you state whether or not you ever saw any?
A. No, sir, I never did.

Q. With respect to that same period of time, August 16th or 17th, prior to that date, did you ever sign any authorization card on behalf of the IAM? A. No, sir.

Q. Will you state whether or not any authorization card was ever offered to you or presented to you? A. No, there never was.

Q. During the course of your employment or the period of your employment at the Bryan Manufacturing Company, were you ever a member of the IAM? A. During my employment there?

Q. Yes? A. Yes, sir.

Q. When did you become a member? A. Well, we had forty-five days, and on the very last day I signed.

Q. Would you explain that, please? You say you had forty-five days. What do you mean by that? A. Well, we were told at one of our meetings we had forty-five days to join the union.

Q. Who told you that? A. Mr. Schwartzmiller.

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Q. The question is will you state what the reason was for your becoming a member? A. We were told we had forty-five days to join by Mr. Schwartzmiller, and the understanding that went around the factory, either

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we joined or it would be a closed shop, we would not—

Mr. Gallucci: I object to that question, what the understanding was.

Mr. Poulton: Me, too.

Trial Examiner: Just leave out the understanding that went around the factory, because that is a pretty broad statement, as to what everybody else understood. Tell us what you understood from Mr. Schwartzmiller's statement, and why you joined.

The Witness: I, myself, understood from Mr. Schwartzmiller's statement, at the first union meeting, if we did not join within forty-five days it would be a closed shop, and if we didn't belong we just didn't work there, is the way I took it.

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Q. (By Mr. Farkas) Do you recall—or did you attend the first meeting? A. Yes.

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Q. Who chaired the meeting? A. Mr. Schwartzmiller.

Q. Do you know if that was confined to all of the employees or a particular portion of them? A. Only the second shift.

Q. Were you present throughout the entire meeting?

A. Yes.

Q. Do you recall what the subject matter of the meeting was? A. Well, as I took it, we were there—there was a contract in the factory, and there were a few things opened, and he wanted to know what our opinion was on them.

Q. Did you have any conversation with Mr. Schwartzmiller, you, yourself? A. Well, at this time Ruth Moses—I backed her up on the question.

(380)

Q. Did you, yourself, talk to Mr. Schwartzmiller? Address him from the floor, or have a conversation with him at that meeting? A. I suppose I did. I don't know—I mean, we talked back and forth about the contract. We wanted it read. I know I was the one that stood up and said I wanted the whole thing read.

Q. To whom did you say that? A. Mr. Schwartzmiller.

Q. Then you did talk to Mr. Schwartzmiller while you were at

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the meeting? A. Yes.

Q. Would you tell us what you said to Mr. Schwartzmiller, and what he said to you? A. I told him we wanted the whole contract read, and of course to this day we don't know if he read the whole thing or not, because we were not acquainted with it at that time.

Q. What did Mr. Schwartzmiller say when you asked him to read the whole contract? A. Well, he said he would read it, but it would take too long, and the place had a liquor license, and they had to close, so he wanted to just skim through it and tell us mostly the important parts that he had approved, or they had approved.

Q. I see. Now, were you present—strike that. Did you hear any conversation between Mr. Schwartzmiller and any other individual at the meeting?

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A. Yes. Mrs. Moses.

Q. Did you hear what Mrs. Moses said to Mr. Schwartzmiller? A. Yes.

Q. Did you hear what Mr. Schwartzmiller said to Mrs. Moses? A. Well, yes.

Q. Did you? A. Yes.

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Q. Will you please tell us what Mrs. Moses said to Mr. Schwartzmiller?

Mr. Gallucci: May I have a standing objection to this hearsay?

Trial Examiner: You may have a standing objection to this line of testimony.

Mr. Poulton: I would like to have the same objection.

Trial Examiner: You may have it.

Q. (By Mr. Farkas) Will you please tell us what Mrs. Moses said to Mr. Schwartzmiller at that meeting? A. Mrs. Moses asked Mr. Schwartzmiller how he came about to be in there, and he said, "Come in through the company", and that everything was legal. We didn't have a thing to worry about; and he ruled her out of order and said he had understood there would be some people in the crowd that were going to try to split up this meeting, and he didn't want to have any trouble.

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Q. (By Mr. Gallucci) You were asked—you were asked on direct examination, and I think you answered the question very quickly, whether or not there was a meeting held of the employees here. A. Yes, there was.

Q. And your answer was "yes, there was a meeting held". Is that correct? A. Of the employees.

Q. Of the employees? A. On the second shift.

Q. On the second shift? A. That I attended.

Q. Was that the only meeting that was called? A. No, there were other meetings.

Q. Was there another meeting called immediately after or before, at which employees of the first or other shifts could attend? A. Yes, there was a meeting.

Q. To your knowledge— A. Of the day shift, yes.

Q. To your knowledge, was every employee in the company given

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an opportunity to attend that meeting or those meetings?
A. Yes. The girls were let out. It was optional. You could either attend or you could not.

Q. On each shift? A. Yes.

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Q. (By Mr. Gallucci) How many girls were on that afternoon shift? A. About fifty or sixty.

Q. Fifty or sixty? A. Yes, approximately.

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Q. Did you at any time—either the time of that meeting or subsequent—approach Mr. Westbrook, who at that time was plant manager, or Mr. McFann, who was plant superintendent, and is now plant manager—did you approach them or any other member of Management, and say, “We don’t want this union in here”? A. No, I didn’t sir.

Q. To your knowledge did any of the other girls with whom you associated there specifically go to Management and say, “This union doesn’t represent us.”? A. I don’t know what they did, sir. I know that I, myself, didn’t.

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Q. To your knowledge, I say. A. No.

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Q. Now, you stated at the meeting you attended—I think you referred to it as the first meeting— A. Yes.

Q. —there was a conversation between Mr. Schwartzmiller and a Mrs. Moses, is that correct? A. Yes, sir.

Q. Where did this conversation take place? A. At the American Legion hall in Reading, Michigan.

Q. Do you remember was it during the meeting? A. Yes, sir.

Trial Examiner: I don't hear you.

The Witness: Yes, sir.

Q. (By Mr. Poulton) Was it at the beginning of the meeting? A. I believe it was during the meeting.

Q. Was it the first part of the meeting, the latter part of the meeting, the middle—to your knowledge? A. I know it was brought up during the meeting.

Mr. Poulton: May I have just a moment?

Trial Examiner: All right.

Q. (By Mr. Poulton) How many questions did you ask at the meeting? A. I asked one, I believe, sir.

Q. Just one. Do you know how many questions Mrs. Moses asked? A. No.

Q. Do you remember whether it was more than one? A. No, sir, I don't.

Q. Do you remember whether Mr. Schwartzmiller answered Mrs. Moses' questions? A. He avoided as many questions as he could.

Q. What do you mean, avoided? A. Well, he would start on a different subject.

Q. How many times did this happen? A. Well, it was still going on when I left over there.

Q. You didn't stay for the whole meeting? A. No. I mean when I quit over there. The last meeting I attended, the same procedure still goes on.

Q. No. How many times did that happen at the first meeting you attended?

Trial Examiner: You mean with respect to all questions?

Mr. Poulton: With respect to what the witness has testified as avoiding answers by Mr. Schwartzmiller.

Q. (By Mr. Poulton) How many times did he avoid answers at that meeting? A. I would say several times, sir.

Q. To whose questions? Do you remember that? A. Well, Mrs. Moses—well, if you asked him any—at that time—at that time it was probably Mrs. Moses.

Q. Just Mrs. Moses was the only time he avoided answering any questions, is that your testimony now? At that meeting, the first meeting? A. Well, he beat around the bush most of the time, but with Mrs. Moses—I mean it was outstanding with all of us.

Q. I didn't get that answer. A. I said it was outstanding, with Mrs. Moses.

Q. How many times did he avoid answering any of Mrs. Moses' questions, if you know?

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A. The one that I am referring to.

Q. Just one time? A. Yes.

Q. Let me get this straight. Did you stay for the entire first meeting? A. Yes, sir.

Q. Do you remember whether there were any nominations of officers at the first meeting? A. We elected two committee members at that time.

Q. Two committee men? A. Yes, sir.

Q. Were there any nominations of officers at that meeting? A. I don't believe so.

Q. Everybody there, did they all vote at this election? A. The two choices.

Q. They voted on it? A. Yes, by paper.

Q. By a secret ballot? A. Yes, sir.

Q. Did you ask Mr. Schwartzmiller to see the contract? A. Not to see it. I asked him to read it, sir.

Q. You didn't ask him to see it? A. No.

Q. Do you remember what Mrs. Moses—exactly what Mrs. Moses asked Mr. Schwartzmiller at that first meeting?

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A. Not exactly. I mean—

Q. Well, to the best of your recollection? A. She asked him how he come about coming in there to get the contract.

Q. What was his answer, to the best of your recollection?

A. That he had come in through the factory, and that he had his contract, and he just didn't want to—didn't seem to want to answer any more questions.

Q. Didn't he say that everything was legal? A. Yes, he said everything was legal.

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Trial Examiner: The witness is now available for cross examination on the testimony which she has given as a witness for the General Counsel. That is the only thing before us at the moment. I want to ask just one question. What was your understanding that these two committeemen that were being elected—what was your understanding they were being elected for?

The Witness: Well, at the time they were going to help go over the things that were open in the contract, and they were to represent the employees on the second shift.

Trial Examiner: Are there any further questions of the witness?

Mr. Gallucci: Yes, I would like to—I would like to have that answer repeated. I didn't catch the last part of it.

Trial Examiner: Will you state your answer again?

The Witness: I said it was our understanding that the two people were—the two people that were chosen—they were going to help finish up the contract, the things that were open, they were going to help close it, and they were going to represent our people on the night shift.

Q. (By Mr. Gallucci) Who were these people that were elected? A. Clayton Munday and Iola Joice.

Q. (By Mr. Gallucci) Did Mr. Schwartzmiller explain to the people—or did anyone there explain to the people—that the employees ultimately elected, the two employees ultimately elected, were to represent the International Association of Machinists? A. As I understood it, they were to represent them, yes.

Trial Examiner: As nearly as you can remember now, just what you were told, as near as you can remember.

Mr. Gallucci: She answered the question.

Trial Examiner: I am asking her to tell me, just as nearly as she can remember, what Mr. Schwartzmiller told them.

The Witness: That they were going to go in and finish up the contract and they would represent us on our shift; if we

had any complaints or anything we were to go to them.

Trial Examiner: That's as near as you can remember what he said?

The Witness: Yes.

Mr. Farkas: I have just one. Miss Mead, you indicated, I believe, in answer to a question of Mr. Gallucci's, that an opportunity was given the employees on the second shift—your shift—to attend the meeting, did you not?

The Witness: Yes.

Mr. Farkas: Will you please state who gave you that opportunity to attend? You say an opportunity was given

to you to attend the meeting. Now, who gave you the opportunity to attend?

Mr. Gallucci: I object to that question.

Mr. Poulton: That certainly is objectionable.

Trial Examiner: It is proper redirect. Overruled.

Mr. Farkas: You may answer.

The Witness: It was worded around the factory there that at eleven o'clock we were released, and we could go to the union

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meeting or we could go home. It was just worded there.

Mr. Farkas: Among the employees?

The Witness: Yes.

Mr. Farkas: That you were to be released?

The Witness: Yes.

Mr. Farkas: Were you released?

The Witness: Yes.

Mr. Farkas: What time?

The Witness: Eleven o'clock, as I recall.

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Trial Examiner: I think there is one question that is not clear in my mind on this election of the committee. You testified that you don't recall anyone saying they weren't going to vote, as I recall, but I don't think anyone has asked

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you whether or not Mr. Schwartzmiller indicated that everybody could vote or only certain people could vote. What is your memory on that point? Did he indicate whether everybody there could vote or did he limit it to certain people?

The Witness: My memory is vague on this, but I do

(413)

believe if the girls didn't have their time trial period in—

Trial Examiner: Didn't have their what?

The Witness: Didn't have their trial period in, and were automatically going to—you see, the company had a time trial period that they have the girls work, and I guess if they aren't taken with their work they are automatically discharged.

Trial Examiner: By "time trial period" you mean people who haven't yet become permanent employees?

The Witness: Yes.

Trial Examiner: Your impression is that only the permanent employees could vote?

The Witness: Yes.

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Mildred Southwell

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) What is your address, Miss Southwell?

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A. Route 3, Hillsdale.

Q. Are you appearing here in response to a subpoena?

A. I am.

Q. Are you now working? A. Yes, I am.

Q. Where are you working? A. Bryan Manufacturing at Hillsdale.

Q. When did you first begin to work for Bryan Manufacturing? A. Bryan Manufacturing? December 22nd, 1953.

Q. And, have you worked there continuously with the

exception of temporary layoffs and so on, have you worked continuously since that date? A. Yes, I have.

Q. That is where you are working now? A. Yes.

Q. Will you please tell us the exact date, if you know, if not the approximate date, when you first learned of the existence of the IAM in the plant of the Bryan Manufacturing Company? A. It was approximately August 17.

Q. And will you tell me how you learned of that? A. Well, it was on the way to work. I rode with Florence Napier, and she told me that the IAM had come in.

Q. Did she tell you how they came in? A. Well,—

Mr. Gallucci: Mr. Examiner, I object on this.

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Trial Examiner: You may have a standing objection to this line.

The Witness: We were on our way to work and she told me that we had a union in the shop. I said, "Well, what union is that?" She said it was the International Association of Machinists and I said, "I never heard of them before," and she told me that she had been called into the office the day before and it was the first time she had heard of it.

Trial Examiner: What was this person's name?

The Witness: Florence Napier.

Q. (By Mr. Farkas) Now you say your best recollection is it was the 17th of August? A. That's right, 1953.

Q. 1954? A. 1954, I'm sorry.

Q. Prior to that time, had you ever heard of the IAM discussed in the plant? A. No, sir.

Q. Prior to that date, had you ever seen any posters or hand bills or circulars from the IAM in the plant or about the plant? A. No, sir.

Q. Will you state whether or not any representative of the IAM ever approached you and discussed the IAM with you prior to that date? A. No, sir.

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Q. Will you state whether or not any employee in the plant, a fellow employee on behalf of the IAM ever discussed that union with you? A. No, sir.

Q. Are you a member of the IAM? A. Yes, sir.

Q. Can you recall when you became a member? A. It was approximately the last of September, '54.

Q. Will you state why you became a member? A. Well, I understood we had to.

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Q. Will you state whether or not you ever signed any authorization card for the IAM? A. No, sir, I didn't.

Q. Will you state whether or not you signed any authorization card for any other labor organization during your employ there? A. Yes, sir.

Q. Your answer was what? A. Yes, sir.

Q. By what labor organization was that? A. UAW-CIO.

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Q. Do you recall approximately when that was? A. About the last of July.

Q. And, where did you sign that? A. Mary Carter's home.

Q. Did you know Mr. Schwartzmiller? A. Yes, sir.

Q. When did you first see Mr. Schwartzmiller? A. I had seen him up at the union meetings.

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Q. When was the first time you saw Mr. Schwartzmiller? A. I seen him at the union meeting was the first time I had seen him.

Q. And, can you in any way place that date? A. No, sir.

Q. Can you state whether or not that was before or after August the 17th? A. After.

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Cross Examination

Q. (By Mr. Gallucci) Mrs. Southwell, you say you signed that authorization card for the CIO? A. That's right.

Q. When did you sign that card? A. Well, I said approximately the last part of July.

Q. What year? A. '54.

Q. What year? A. 1954.

Q. Are you sure that that card was signed before the meeting of August 17th? A. Yes, sir.

Q. You are sure it was? A. Well, to really swear to it, I know it was before, the tenth of August, I know that.

Q. The tenth of August? A. I know it was before that.

Q. What makes you think the tenth of August? A. That is when they said the contract was signed.

Q. Who said the contract was signed? A. That's the way I understood it. I don't know just—

Q. Where did you get this information? A. Where did I get the information the contract was signed? From the girls that were called in the office.

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Q. Have you in any manner ever signified to the company your desire to be a member of the CIO? A. Would you restate that question, please?

Q. Have you in any way indicated to the company before; at the time of or after you signed that CIO card that you wanted to be a member of the CIO? A. No, sir.

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Q. (By Mr. Poulton) When was the first time you heard from the IAM? A. Approximately August 17.

Beverly Hadley

a witness called by and on behalf of the General Counsel, being

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first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you live, Miss Hadley?
A. Reading, Michigan.

Q. Are you appearing here in response to a subpoena?
A. Yes.

Q. Are you working at the present time? A. Yes.

Q. Where? A. Fifty Plus Five Corporation, West Unity, Ohio.

Q. Prior to that time, where were you employed? A. Bryan Manufacturing Company.

Q. Can you recall approximately when you first began to work for Bryan Manufacturing Company? A. July 6, 1954.

Q. And can you recall how long you worked there? A. Until August 17, 1954.

Q. And, what was the occasion for your employment terminating or ending at Bryan? A. Layoff.

Q. Was that a general layoff or were you the only individual? A. No, there were about twenty-two girls laid off at the same time I was.

Q. Now, during the time that you were employed at Bryan Manufacturing Company, had you ever—will you state whether

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or not you had ever been approached by any representative of the IAM with respect to organizing or joining? A. No, sir.

Q. Did you—will you state whether or not any employee, fellow employee at Bryan approached you on behalf of the IAM? A. No, sir.

Q. Will you state whether or not during the time you were employed there you saw any hand bills, posters or literature of any kind from the IAM? A. I did not.

Q. During the time that you were employed there, did you have—did you or did you not, will you state whether you had occasion to learn of the existence of the IAM in the plant? A. I had no occasion.

Q. When did you first learn that there was a union called the IAM in the plant at Bryan Manufacturing Company? A. When I reported to work on August 16th, 1954.

Q. And, how did you learn that? A. Mr. McFann came into the shop and called us girls to the office.

Q. Let's go back a bit. You went to work and reported as usual? A. Yes.

Q. What time was that? A. Four oh five.

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Q. Four oh five in the afternoon? A. No, four thirty, four thirty.

Q. Approximately then. What shift did you work? A. Second.

Q. Second shift. Now, how long had you been working when you saw Mr. McFann come out, approximately? A. About an hour.

Q. And, then you say you saw Mr. McFann in the plant? Now, will you tell us what you saw? A. All I saw was girls leaving the working room.

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Mr. Farkas: All right, I'll withdraw that. I think the point is well taken. Will you tell us, Miss Hadley, what you saw?

The Witness: I saw these girls leaving the working room.

Q. (By Mr. Farkas) All right. Do you know approximately how long they were gone? A. I would say the biggest share of an hour.

Q. Who did you see go, wherever they went? A. The only person I definitely saw was Jean Edinger.

Q. With respect to your job, where does Jean Edinger work? With respect to your particular duties and the things that you do? Where does Jean Edinger work, if you know. A. She worked in the back of this room and I worked in the middle, so when she walked through the room, I would see her leave.

Q. Now, can you recall anyone else who left the room? A. No, sir.

Q. You previously testified at least she was gone about an hour? A. Yes.

Q. After that what happened? A. When the girls came back, I did not, but others asked.

Q. Did you have a conversation with anybody that afternoon with respect to the IAM? A. Sir, there were lots of conversations.

Q. I speak of any conversation that you might have had. A. Yes, but at this time I don't even remember who with.

Q. Now, you stated previously that you learned of the existence of the IAM that afternoon, did you not? A. Yes.

Q. Will you tell us how you learned that, whatever it

was that you learned? A. Word of mouth, one girl telling the other.

Q. What? A. That we were going to have a union.

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Q. Do you recall who specifically told you? A. No.

Q. Do you recall whether or not there was mention of any particular union? A. Yes.

Q. I beg your pardon? A. Yes.

Q. What union was mentioned? A. The IAM.

Q. When—strike—that. Have you ever seen Mr. Schwartzmiller? A. Yes.

Q. Will you please tell us when the first occasion was in which you saw Mr. Schwartzmiller? A. August 16.

Q. Where was that? A. In the factory.

Q. What was Mr. Schwartzmiller doing? A. Talking to various girls.

Q. Did he talk to you? A. No.

Q. Have you ever attended any meetings of the IAM? A. Yes.

Q. How many? A. One.

Q. When was that?

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A. August 17th.

Q. What time was the meeting? A. Eleven oh five or around—eleven in the evening of August 17th.

Q. Where was the meeting held? A. At the American Legion Hall, Reading.

Q. Did you attend it in its entirety? A. Yes.

Q. You were present throughout its entirety? A. Yes.

Q. The entire meeting? A. Yes.

Q. Incidentally, who chaired the meeting? A. Mr. Schwartzmiller.

Q. Will you tell us what happened at that meeting? Speaking of what you know, what you saw or what you

heard? A. Mr. Schwartzmiller read in part, the contract and we nominated temporary stewards for our shift.

Q. Who did you nominate as temporary stewards for your shift? A. Lola Joice and Clay Munday, I believe that's his name.

Q. Were there any conversations between Mr. Schwartzmiller and any employees from the floor? A. Yes.

Q. While you were present? Can you recall any of those? Mr. Gallucci: I object to this, Mr. Trial Examiner. It

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is pure hearsay.

Trial Examiner: Overruled. Answer the question.

The Witness: The conversation between Mr. Schwartzmiller and Mrs. Moses is very clear in my mind.

Q. (By Mr. Farkas) All right, would you please testify as to what that was, indicating who spoke and what each said? A. Mrs. Moses asked him who asked the IAM to represent us.

Q. What did Mr. Schwartzmiller say? A. He said, "I was told there were going to be people here that would try to break up this meeting."

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Q. (By Mr. Farkas) Miss Hadley, during the course of your employment at the Bryan Manufacturing Company, will you state whether or not you ever signed an authorization card on behalf of the IAM? A. I did not.

Q. Will you state whether or not you signed an authorization card on behalf of any other labor organization? A. Not while I was employed.

Mr. Farkas: I see. No further questions.

Cross Examination

Q. (By Mr. Gallucci) Miss Hadley, in regard to this meeting—

Trial Examiner: Speak a little louder, please.

Q. (By Mr. Gallucci) In regard to this meeting of August 16 which you attended— A. I didn't say August 16.

Trial Examiner: I think you're mistaken on the date. She said she attended the meeting on the 17th.

Mr. Gallucci: I'm sorry.

Q. (By Mr. Gallucci) Attended meeting August 17 about eleven oh five p.m. Those are my notes. I'm sorry, is that correct? A. Yes.

Q. How many people would you estimate were in that room? A. Thirty-five, forty.

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Q. To your knowledge, were they all employees of the Bryan Manufacturing Company? A. Yes.

Q. And, to your knowledge, were they all employees of the second shift? A. To my knowledge, yes.

Q. Was there much talking going on during the meeting, back and forth between the girls on the floor and—as well as the person who was chairman of the meeting? A. Yes.

Q. Where were you standing in relation to Mrs. Moses? A. I was probably just about four chairs away from her.

Q. Was there anyone else talking in the room while Mrs. Moses was talking? A. No.

Q. She was the only person speaking? A. She had asked for the floor.

Q. Everyone else was quiet? A. It was quiet, yes.

Q. Aside from Mrs. Moses asking Mr. Schwartzmiller as you put it, who had asked the IAM to represent us, were there any direct objections made to Mr. Schwartzmiller's being there that night by anyone on the floor? A. Not that I heard.

Q. Did anyone to your knowledge tell Mr. Schwartzmiller that

they did not wish to be represented by the IAM? A. Not to my knowledge.

Q. To your knowledge, did anyone tell Mr. Schwartzmiller that they wanted to be represented by any other labor organization? A. Not to my knowledge.

Q. You mentioned that two persons were nominated for an office of some kind and the name of one I got was Iola Joice and the other was who? A. Clay Munday, I believe. Munday is his last name.

Q. Was it made clear to you—let me ask this. Did you participate in that vote? A. Yes.

Q. Was it made clear to you that you were electing two members who would act as representatives of the Union that Mr. Schwartzmiller represented?

Mr. Farkas: I'll object to the question as to what was made clear to her.

Trial Examiner: I'll overrule the objection.

Q. (By Mr. Gallucci) Did you understand, did you understand that you were electing two representatives who would be affiliated with or represent the union that Mr. Schwartzmiller was representing? A. Yes, sir. I understood that.

Q. To your knowledge were there any objections voiced to the election of the individuals as—

A. No, there wasn't.

Q. Strike that last word of mine, "as." Were there any objections to the election of these individuals as officers or as representatives of the Machinists? A. No.

Mr. Gallucci: I have no further questions.

Trial Examiner: Let me ask one question right along this same line so it will be in the record. Do you know whether everyone present was permitted to vote in this election, or was there any kind of restriction placed?

The Witness: I remember no restrictions.

Trial Examiner: You remember no restrictions. Do you remember whether it was by secret ballot or voice vote or how it was done?

The Witness: I do not know.

Trial Examiner: You do not remember whether there were more than two people nominated or not?

The Witness: There were more than two people nominated. I do remember that and I believe we voted by raised hands.

Trial Examiner: Take just a minute and think about that and see if you can remember how many people were nominated and how the vote was taken. If you can't, say so. If you can, tell us what you remember.

The Witness: That's all I can remember. I would say five were nominated.

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Trial Examiner: How many?

The Witness: Five.

Trial Examiner: Five, and what is your best memory as to how the election was conducted?

The Witness: Just what I've already told you.

Trial Examiner: All right, proceed. Do you have anything?

Mr. Poulton: I have no questions.

Mr. Gallucci: I was going to pursue your line of questioning just a little more to try to test the witness's recollection here.

Q. (By Mr. Gallucci) Do you recall—do you have any special or outstanding incident in your mind that recalls to you that you either held up your hand to vote or stood up?

A. No.

Q. Do you recall pieces of paper being formed and torn up and names being put on pieces of paper and put in a

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box or handed up to the Chair? To the best of your knowledge, of course. A. No, sir.

Q. Did you vote? A. Yes.

Q. Do you remember who you voted for? A. No.

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Edith Wolford

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you live, Miss Wolford?

A. Route 1, Hillsdale.

Q. So that everybody is able to hear you clearly and there is no problem, will you make your best effort to speak good and loudly? A. Yes.

Q. Are you working at the present time? A. Yes, I am.

Q. Where are you employed? A. Bryan Manufacturing Company, Reading.

Q. Can you recall when you first began working there, giving the exact date if you can, the approximate date? A. July 1, 1954.

Q. And, with the exception of possibly temporary layoffs and so on, have you worked there continuously? A. Yes, I have.

Q. What shift do you work on? A. The second.

Q. How long have you worked on the second shift? A. The entire time with the exception of about two weeks, three weeks.

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Q. Was that at the beginning of your employment? A. Oh, probably about two months or a month and we started—we shifted over on days and transferred.

Q. Can you in any way place the month that you worked

during the day shift? A. The end of August and September, I believe.

Q. Have you ever seen Mr. Schwartzmiller? A. Yes, I have.

Q. Will you please tell us when the first time, when the first occasion was that you saw Mr. Schwartzmiller? A. The night that they called the mass meeting, or the meeting on the second shift which I believe was the 16th of August. I am not definite about that.

Q. From your testimony then, I take it that you attended a meeting at the end of the second shift? A. Yes, we did.

Q. And, your recollection of that is the 16th of August?

A. I don't know, I believe it was on a Tuesday evening. I'm not sure of the dates.

Q. You believe it was on a Tuesday? A. Yes.

Q. Miss Wolford, if I tell you that by reference to a calendar of the year 1954 that the 16th of August was on a Monday, would that help you refresh your recollection as to the date?

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A. Then it was probably the 17th, because it was on a Tuesday evening.

Q. Are you a member of any labor organization? A. I am, the IAM.

Q. When did you first become a member of the IAM? A. Oh, probably about the end of August, somewhere in there.

Q. About the end of August? A. Yes.

Q. And why did you become a member of the IAM? A. Well, because we had to.

Q. I am speaking of you, yourself. Just tell me why you became a member. A. Because we were told that we had forty-five days, thirty or forty-five days, I'm not sure, to sign a card.

Q. Now, who told you that? A. Mr. Schwartzmiller.

Q. And, where did he tell you that? A. At the meeting, which would have been August 17th.

Q. Now, prior to August 17th, did you attend any meetings of the IAM? A. No, I didn't.

Q. Prior to that date, will you state whether or not you spoke to or had been approached by any representative of the IAM? A. No, I hadn't.

Q. Will you state whether or not prior to that day, August 17th, you had ever been approached or spoken to by any employee on behalf of the IAM? A. No.

Q. Will you state whether or not prior to August 17th you had signed any authorization card on behalf of the IAM? A. No.

Q. Will you state whether or not you had signed any authorization card on behalf of any other labor organization? A. No.

Q. Prior to August 17th, will you state whether or not you had ever seen any handbills or posters or circulars or literature by the IAM? A. No, I didn't.

Q. When did you yourself first know or learn of the existence of the IAM in the plant? A. I believe it was on—probably would have been August 16th, shortly after we came to work, two or three girls from our shift were called into the office.

Q. Just a moment. Let's stop there. Did you see anyone going out of the plant? A. Up into the office?

Q. Yes. A. Yes, I did.

Q. Now, you say up into the office. Will you explain why you

said "up into the office?" A. Because they walked through the factory up to the office. The office is in the front of the building.

Q. Is there a particular entrance used to go to the office? A. Yes, there is.

Q. How many entrances are there from the plant to the office? A. One that I know of.

Q. Do you know of your own knowledge whether or not it is possible to go from the office to the plant through any other entrance? A. Not that I know of.

Q. Who did you see walking from the plant toward that entrance? A. Lillian Shaffer.

Q. Lillie Shaffer? A. Yes.

Q. Did you see anyone else? A. No, not going to the office.

Q. Who if anyone—strike that. Do you know how long Lillie Shaffer was gone? A. Oh, approximately a half hour, maybe a little longer.

Mr. Gallucci: How long was she gone?

The Witness: Approximately a half hour, if I am not mistaken. I don't remember exactly, but I think it was a half hour.

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Q. (By Mr. Farkas) Where does Lillie Shaffer work? Doing her work with respect to where you perform your duties? A. Where did she, at that time?

Q. Yes. A. Across the aisle.

Q. Right across the aisle from you? A. Yes.

Q. Do you know of your own knowledge the occasion for Lillie Shaffer leaving her work and walking toward the office entrance? A. Did I know before? I mean after she left?

Q. No, then. Did you know the circumstances? A. No.

Q. All right then, will you please tell us how you learned that the IAM was in the plant? A. After the girls returned.

Q. Now you say "girls." You stated that you saw Lillie Shaffer walk out of the room. Now, you mentioned the term girls in the plural. Will you state whether or not you saw anyone other than Lillie Shaffer coming out? A. As they came back to the front room of the factory of the part that I work, yes.

Q. You did? A. Yes.

Q. Who did you see come back in the plant?

Mr. Gallucci: No objection.

Trial Examiner: That's all right, go ahead and answer.

The Witness: Donna Munger.

Q. (By Mr. Farkas) Donna Munger. Did you see anyone else? A. No.

Q. All right, will you continue now as to how you learned?

A. I don't as to the exact time. It spread rather fast. The reason they had been up into the office was because there had been a contract signed and we would now have a union.

Q. When you say it spread, what do you have reference to? A. I have reference to? Well, undoubtedly one of the girls that had been in the office told one girl, then this girl told the other and shortly after I heard from a girl who had been up into the office.

Q. Who was that? A. Donna Munger.

Q. What did Donna Munger tell you? A. Just about the same thing I had already heard, that they had called them to the office to tell them they were having the contract signed.

Q. You stated, I believe, that you attended that first meeting at the end of the second shift? A. That's right.

Q. Were you there throughout the entire meeting? A. Yes, I was.

Q. Who chaired the meeting?

A. Mr. Schwartzmiller.

Q. Was there anyone else present from the IAM? A. No.

Q. Did you have any conversation with Mr. Schwartzmiller at the meeting? A. Not directly, no.

Q. Was there any conversation between Mr. Schwartz-

millar and any employee or any employees at the meeting?

A. Yes, there was.

Q. Do you recall who was involved in that conversation?

A. Oh, yes. The most outstanding one was Mrs. Moses and Mr. Schwartzmiller.

Q. Do you recall the subject matter of that conversation?

A. Well, when Mr. Schwartzmiller was asked how he was able to come and sign a contract without us knowing about it or how he—

Q. I beg your pardon. He was asked what? A. When Mrs. Moses asked him how he got to that, how he was there—the best I remember is he said, “You don’t pass up a good opportunity when you see one or when you have one.”

Q. Was there anything further said? A. Not to my knowledge.

Q. Was there anybody else that had any conversation with Mr. Schwartzmiller that you can recall? A. Perhaps maybe asking him to read the contract, but I don’t

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remember anything definite.

Q. Do you recall that? A. Yes.

Q. Who asked him that? A. Maryalice Mead.

Q. Do you recall what Mr. Schwartzmiller said? A. Well, he was very reluctant to read the contract. I mean, he wanted to read what parts he wanted to read.

Mr. Gallucci: I object.

Mr. Poulton: I object to this.

Trial Examiner: Just tell us anything you can remember what Mr. Schwartzmiller said when he was asked.

The Witness: He said that the place would have to close, that we didn’t have much time, so that in the short period of time if he—it would shorten the period of time if he didn’t have to read all the contract.

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Q. (By Mr. Farkas) Do you recall anything else that occurred there at that first meeting? A. Nothing outstanding, no.

Q. Have you now told us everything that you can recall? A. Yes.

Q. Can you recall whether or not there was any election of officers or any other? A. Oh that, yes, definitely.

Q. All right, do you recall what that was about? Will you tell us that, please?

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A. He told us that we would elect two members, two employees from our shift to represent us, so therefore, we nominated four people, I believe.

Q. Do you recall who they were? A. Donna Munger, Clayton Munday, Iola Joice and Maryalice Mead. And then, we voted by secret ballot and Iola Joice and Clayton Munday were elected.

Q. Your recollection is that you voted a secret ballot? A. Yes. And, at that time that was the night I believe—I don't know the exact amount, but some girls were laid off on the second shift, but they attended the meeting and were told that they could vote, although they were no longer employees, but they also voted.

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Cross Examination

Q. (By Mr. Gallucci) Now Miss Wolford, when were you employed at Bryan? A. July 1, 1954.

Q. About sixteen months ago? A. Yes.

Q. That meeting of August 17 to which you refer at which Mr. Schwartzmiller read, as you stated, "part of the contract," do you remember him reading to you the section that dealt with employees having to become members

forty-five days after they were employed and forty-five days after the contract was signed? A. I don't know whether he read it from the contract. I remember he discussing that and explain.

Q. You remember that it was discussed and explained? At that time, did you object to that particular clause in the contract? A. No, I didn't.

Q. To your knowledge, and you state you were there from the beginning of the meeting to the end, is that correct? A. Correct.

Q. To your knowledge, did anyone else there in the hall object to that particular provision having to become members? A. They might have voiced their opinion among themselves, but

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not to the Chair.

Q. To your knowledge, did you hear any of that, any of those remarks addressed to the Chair? A. Not to the Chair, no.

Q. Were any of those remarks addressed to you? A. Maybe not directly to me, but around me so that I could hear them.

Q. To you? And, what was the gist of these remarks? A. They didn't understand why we had to have a union.

Q. Is that why you had to have a union? A. A union.

Q. Any union? A. Any union.

Q. I see. In other words, are you saying that the objection was not to the IAM, but to any union? A. You could take it both ways, any union or why this union was coming in, why we had to join this union.

Q. Yes. Do you remember any specific person voicing that particular objection? A. Yes.

Q. Who? Margaret Hatfield.

Q. What did she say? A. She didn't like the idea of a

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union coming in, of ^{us} having no choice and that we had to accept it.

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Q. (By Mr. Gallucci) You stated that Donna Munger told you that a contract had already been signed? Isn't it a fact that Donna Munger did not say that a contract had been signed and that nothing at all was mentioned about signing it? Isn't it a fact that she told you that? A. Not to my knowledge, it isn't.

Q. Isn't it a fact that she told you that there was a contract in there proposed to which you people would go to a meeting to discuss?

Mr. Farkas: Now I object to that.

The Witness: That is not my understanding, no.

Trial Examiner: Overruled.

Q. (By Mr. Gallucci) You remember the exact words?

A. No.

Q. You don't remember the exact words. This is about sixteen

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months ago or about fourteen months ago, is that correct?

A. Yes, sir.

Q. You don't remember her exact words? A. No, she wasn't addressing me personally. She was talking to the group.

Q. She wasn't talking to you personally? A. No, I didn't say she was.

Q. How far from you was she standing? A. Perhaps two feet away.

Q. And, she said something about a contract? A. Had been signed, yes.

Q. You keep repeating that Miss Munger said that a contract had been signed. Now, is it your word under oath

that those were her exact words, "a contract had been signed?" A. Well then, I'll change it; that was my impression.

Q. As a matter of fact, you don't recall her exact words, do you? A. No, I don't.

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Redirect Examination

Q. (By Mr. Farkas) Just a question or two, Miss Wolford. In so far as you yourself are concerned, would you please tell us once again what you understood Miss Munger to have told you

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with respect to the—what occurred in the office after she came out?

Mr. Gallucci: I think I am going to object to this, going into this again, because I think that the witness's testimony was abundantly clear as to her impressions of what happened.

Trial Examiner: Objection is overruled. Tell us to the best of your memory.

The Witness: To the best of my memory, shall I tell the impression I received?

Trial Examiner: Tell us as best you can the substance of what she said, even though you can't say word for word she said exactly this, what is your best memory of what she said?

The Witness: That they had been called into the office and that there had been a contract signed and that we would be having a union meeting or a meeting following, that night.

Recross Examination

Q. (By Mr. Gallucci) You stated that your impression was that Donna Munger said, and I think I quote from your testimony, "They'd been called into the office and that a contract had been signed and that there would be a meeting?" A. Yes.

Q. Now, are you giving us—strike that, please. Would you state, or would you assert those words, "A contract had been signed?" A. He told me to say clearly to the best of my knowledge.

Q. Will you please answer my question? I heard fully well what Mr. Trial Examiner asked you to say and I am asking a different question. Do you recall the question I asked? A. Yes.

Q. The question was this: Would you assert that the words that came from Donna Munger's mouth and lips were, "A contract had been signed?"

A. To the best of my knowledge, yes.

Q. Those were the words that came from her lips? A. Maybe not the exact words.

Q. As a matter of fact, you can't recall her using the word "signed," you are giving us your impression? A. That's what I was told to.

Q. Is that correct? A. Yes.

Q. Do you recall her using the word "signed?" A. Yes, I do. To the best of my knowledge, I do.

Q. Who did she say had signed the contract? A. She didn't.

Q. She said that a contract had been signed? A. That's right, yes.

Q. By whom? A. By whom? It was taken for granted.

Bryan, the same as what she had said, they had been up in the office. Who else would the contract have been signed by?

Q. So by the fact that they were up in the office, you were also assuming that a contract had been signed? A. By her conversation, yes.

Q. And again I ask you, would you state under oath—

Trial Examiner: The witness is under oath. Now, you have said that about six times. We all know—

Mr. Gallucci: It seems to me, Mr. Trial Examiner, this

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witness from the beginning has been very definitely stating that the other employees came out and said that a contract had been signed and I intend to discredit this witness.

Trial Examiner: I don't think you need to keep using the term "under oath," all the time. She's under oath. Let me advise you that you took an oath. You know that, don't you?

The Witness: Yes.

Trial Examiner: And, you've been under oath the entire time and counsel doesn't need to use that phrase. Proceed.

Q. (By Mr. Gallucci) Let us get one thing clear here, you are testifying of a personal impression, the total subject matter of the testimony, or are you testifying to the words used? A. I am testifying to the fact of what I clearly remember, my impression, yes.

Q. Your impression of the words used or of the subject matter? A. Perhaps. Maybe it would suit you better if I said subject matter.

Q. It would suit me very well if you would just get to the truth. A. I'm telling you what I remember.

Mr. Farkas: Mr. Examiner: I submit this witness has done her very level best to answer his questions as to what she

recalls of the conversation. Now, this persistent questioning along the line is so that the witness is completely confused, I think, is in high disregard of the witness's rights.

Mr. Gallucci: I don't think this witness is confused.

Trial Examiner: Ask your question.

Q: (By Mr. Gallucci) Again, Miss Wolford, irrespective of how you feel your answers would suit me, that is not the point. A. I told you. I don't know what else you want me to—

Q. I want you to state whether or not during the course of your testimony and the testimony more specifically dealing with what Miss Munger is alleged to have said, are you testifying that those were her exact words, or are you testifying that that was your impression of what was said?

A. When I testified to the fact that I heard Donna Munger say there had been a contract signed, I was asked, I had heard about that and when I said that I didn't definitely say those words came—

Mr. Gallucci: May I cut in here, Mr. Trial Examiner?

Trial Examiner: Let the witness answer your question.

The Witness: I'm trying to explain.

Mr. Gallucci: She wasn't answering my question. I've tried to make it very clear.

Trial Examiner: I'll overrule you and let the witness finish her answer. Now, go ahead and answer that question.

The Witness: Shall I start from the beginning again?

Trial Examiner: Yes.

The Witness: All right, when I was asked what happened in the office, I said I remembered that there had been a contract, Donna Munger saying there had been a contract signed. Someone asked me, "Are you sure those were her exact words." I was giving to the best of my recollection

what I had heard and that still to my knowledge, is what I had heard.

Q. (By Mr. Gallucci) I am going to repeat. You see, now there is a very definite distinction between what a person has heard generally or between what a person very distinctly remembers hearing. The words in the context in which they were used. Again my question to you Miss Wolford, was this—

Mr. Farkas: Mr. Examiner.

Q. (By Mr. Gallucci) Do you remember and are you testifying as to a general impression of what was said, or by your testimony, are you trying to impute those words as having come from the lips of Miss Munger? Did you get the two alternatives I gave you? A general impression of what was said or— A. I heard. Is that an impression when you hear something?

Q. I'm asking you. I don't think we want to play with words. I put it very simple and very basic.

Trial Examiner: Well Mr. Counselor, I've been patient listening to this; now wouldn't you concede as a matter of fact, that there is a third possibility, a person can either

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remember the words exactly or have only a general impression or have a fairly good memory, a relatively accurate memory that may not repeat the words in detail? Don't you think there is a third possibility there?

Mr. Gallucci: I suppose if we go into degrees of possibility we could shave it down to five or six.

Trial Examiner: All right, you are insisting this witness accept one or the other of two possibilities which I think are the extremes.

Q. (By Mr. Gallucci) Miss Wolford, can you remember any other conversations you had that day with anybody relating to the specific contract in question? A. Yes. There was a good deal of conversation going on.

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Q. Yes. As a matter of fact, there was a lot of conversation going around that day and that night, is that correct?

A. That's right.

Q. Now, regarding these conversations that took place right there in the plant at or about the time these girls as you testified returned from the office, do you remember any other conversations clearly enough to quote them word for word? A. Not to quote them word for word, no. No one remembers that closely, but to give you a very good idea of the conversations, yes.

Q. I see. And, is that what you are doing when you testify as to what Miss Munger said?

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A. Yes. I think I have a fairly good memory, yes. I mean, I can remember that conversation as well as two or three others.

Q. You're giving me a good idea as you said in your own words, as to what went on? A. Yes.

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Myrtle Long

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) What is your address, Mrs. Long?

A. Route 1, Quincy.

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Q. Are you here in response to a subpoena? A. Yes.

Q. Are you employed at the present time? A. Yes, I am.

Q. Where are you working? A. Bryan Manufacturing Company, Reading.

Q. And, approximately when did you begin working at the Bryan Manufacturing Company? A. On the Wednesday before the Fourth of July of last year. It would be about the 29th of June.

Q. And, since that date, have you worked continuously with the Company with the exception of temporary layoffs or illnesses? A. Yes, I have.

Q. Have you had any periods of absence? A. I had a two week's leave of absence.

Q. Other than that, have you worked continuously? A. Yes.

Q. Are you now a member of any labor organization in the plant? A. The IAM.

Q. When did you become a member of the IAM? A. On the 16th of August of last year.

Q. 1954? A. Yes.

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Q. Do you know Mr. Schwartzmiller? A. Yes, I do.

Q. Will you please tell us the first time you saw Mr. Schwartzmiller? A. On the 16th of August of '54 when I went into the office.

Q. Prior to that date, did you ever see Mr. Schwartzmiller? A. No.

Q. Prior to August 16th, will you state whether or not you have ever been approached by any member of the IAM? A. No, I haven't.

Q. Will you state whether or not you have ever been approached by any employee at Bryan on behalf of the IAM? A. No.

Q. Will you state whether or not prior to that date you had ever seen any handbills or posters or literature of any kind mentioning the IAM? A. No.

Q. When was the first time that you knew or heard of the IAM being in the plant? A. On the 16th of August.

Q. What shift do you work on, Mrs. Long? A. The second.

Q. Will you please tell us how you learned of the IAM being in the plant on that date? A. Why, a group of five girls were called into the office.

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Q. Who were those girls, if you know? A. Yes, there was Donna Munger, Thelma Rooks, Jean Edinger, and myself, there was five of us, Lil Shaffer.

Q. And, what occasioned your being in the office that date? How is it that you were in the office? A. Why, a girl, I don't remember who, came and got me at work. I was the last one picked up. The rest of them was waiting out in the aisle. I went in, I was told to go in.

Q. The girls that you named were waiting in the aisle? A. Yes.

Q. This was on the second shift? A. Yes.

Q. About what time? A. Well, we went to work about 4:35. We worked just about an hour, approximately.

Q. And, would you tell me who went into the office? A. Who went into the office?

Q. Yes. A. We all did.

Q. You five girls? A. Yes, and Mr. McFann was—

Q. Did you have a conversation with Mr. McFann before you went in? A. I didn't talk to him, but he was, I guess he was addressing to all of us, he said, "Don't be afraid girls, you're not going

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to get hawled out," and that's all I know.

Q. You then went into the office? A. Yes.

Q. Who was there when you got there? A. Well,

Schwartzmiller was in there and I don't remember who else.

Q. Do you know—well, strike that. Do—can you state whether or not there was any individual or individuals from the company, any members from the management present in the office when you were there? A. Why, Westbrook introduced Schwartzmiller.

Q. Mr. Westbrook was there? A. I don't recall whether he came in after us girls did or whether he was setting in there.

Q. I see. Was there anyone else there from the company? A. I believe he was the company lawyer.

Q. Who would that be? Do you know who that would be, what his name was? A. No, I don't know what his name was.

Q. Will you tell us what happened while you were in there? A. Well, they explained—

Q. Who is they? Well, what was the first thing that happened? A. Mr. Westbrook introduced Schwartzmiller to us and said he was from the IAM, and that they had come in and that something was signed on the table, I believe it was an agreement between

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the company and the Union, and that he would explain to us the basic facts in the contract and any changes we wished to be made, why, could be gone over later.

Q. Now Miss Long, would you please tell me the occasion, if you know, for being one of these girls selected to go into the office? A. Well, I didn't know at the time when I went in why I was chosen, but the question came up later on.

Q. You mean in the meeting? A. No, after the meeting was over, among the girls. They had the idea I guess, that it was—the way they expressed it, it was all—

Q. When you say "they," who are you speaking of?

A. The girls, that it was all cut and dried and that we were put in there to run the thing. So, the question was put to McFann and he explain that he chose the names from random down the list of the time cards.

Mr. Poulton: I'm going to object to the answer and move it be stricken. It is clear hearsay unless the witness shows that she heard the statement by McFann.

Trial Examiner: Did you hear McFann make that statement?

The Witness: Yes.

Trial Examiner: Tell us just where that occurred and when that occurred?

The Witness: You mean when he said that he and the—

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Trial Examiner: Yes.

The Witness: It was outside the office door.

Trial Examiner: Was this before you went in or after?

The Witness: After, and he was trying to clear up how us girls happened to be the ones chosen to go in there to show that there was no partiality taken through the girls.

Trial Examiner: Was this right after you came out, or sometime after?

The Witness: It was sometime afterwards.

Q. (By Mr. Farkas) What did Mr. McFann say? A. He said they had been chosen at random and that he had tried to get a girl from each department to be chosen to go in.

Q. Now, getting back to the—that portion of the meeting with respect to Mr. Schwartzmille, what if anything else did Mr. Schwartzmiller or any representative of the company say while you were there?

Mr. Gallucci: May I have an objection to this entire line?

Trial Examiner: You may.

Q. (By Mr. Farkas) What else did Mr. Schwartzmiller tell you girls, if anything?

Trial Examiner: Well, let me try to get something clear in my mind. Has the witness testified about anything that Schwartzmiller told her, or has she testified only about what Westbrook told her and was Westbrook still in the office when Schwartzmiller was there? I would like to have that a little

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more clearly.

Mr. Farkas: All right.

Q. (By Mr. Farkas) Miss Long, would you tell us just exactly what was said in the office there and by whom? Start at the beginning again. A. Well, I couldn't tell you exactly what was said, because the basic parts of the contract were read to us and—

Trial Examiner: Can you remember who spoke first, what was said?

The Witness: Well, the entire conversation was mostly Schwartzmiller reading the parts of the contract.

Trial Examiner: Did anybody say anything before Schwartzmiller started speaking?

The Witness: Only when he was introduced.

Trial Examiner: Who introduced him and what was said at that point?

The Witness: Westbrook.

Trial Examiner: What did Westbrook say to you then?

The Witness: Why, he introduced him as from the IAM.

Trial Examiner: Did Westbrook say anything other than that?

The Witness: Not to my knowledge.

Trial Examiner: Did Mr. Westbrook stay there or leave or what happened?

The Witness: I don't remember whether he left or stayed,

but he was pretty much left out of the conversation from then on.

Trial Examiner: You don't remember whether he was there?

The Witness: No.

Trial Examiner: Do you remember if he stayed?

The Witness: Wait a minute, we have two days there.

Trial Examiner: You are talking about which of the two days? The first or the second?

The Witness: The first. Now, on that first day I couldn't tell you whether they stayed or left.

Trial Examiner: Do you know whether McFann ever came in or stayed in the hall?

The Witness: I can't say whether he ever came in.

Trial Examiner: After Westbrook introduced Schwartzmiller, you can't remember whether he stayed or left, and you can't remember whether the attorney stayed or left, is that true?

The Witness: No.

Trial Examiner: Can you remember anybody talking after that except Schwartzmiller and these five girls?

The Witness: No, I can't.

Trial Examiner: All right, go ahead now, tell us what Schwartzmiller said after he was introduced.

The Witness: Well, it was all—he read parts of the contract. It was as he said it, a temporary—parts which could be changed or altered in the future and what would be to

our advantage in the contract and like getting a raise. It was more or less parts that came out of the contract.

Q. Are you a member of the IAM? A. Yes, I am.

Q. When did you become a member? A. On the 16th.

Q. When on the 16th that you can recall did you become a member? A. When I was in the office.

Q. (By Mr. Farkas) You testified previously to a meeting in the office where there were approximately five girls and that you were, and Mr. McFann spoke to you five before you went in. Do you recall that? A. Yes.

Q. Can you tell us whether or not this meeting of which you signed the card was the same meeting or a different meeting?

When did it occur? A. That was the same one on the 16th.

Q. It was the same meeting? A. Yes.

Q. Now, can you recall whether or not—strike that. Can you recall who was present at the time you became a member at this meeting? A. Well, Schwartzmiller is the only one that I really remembered.

Q. All right. Now, what if anything was said or what if anything occurred at the time you became a member in the office? A. Mr. Schwartzmiller said that as long as we was in there, we might just as well be among the first to sign the cards.

Q. Did anybody say anything to that? A. No, we signed them.

Q. Miss Long, would you please tell me insofar as you personally were concerned, why did you sign?

Mr. Gallucci: May I object to this, Mr. Trial Examiner?

Trial Examiner: You may. I'll overrule your objection.

The Witness: Well, I signed because I felt I had no other choice. They said the agreement had been signed

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on the tenth and as long as it was in and I intended to work there, I might just as well sign too.

Q. (By Mr. Farkas) And, would you tell us, explain the details of how you signed that membership card? Where did you get it, for example?

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A. Well, the membership cards were passed out by Schwartzmiller.

Q. And, they passed one out to you, is that true? A. Yes.

Q. Did anyone else get any? A. We all signed them, all five of us girls.

Q. Prior to that day in the office, which you say was the 16th of August, will you state whether or not you had ever signed any authorization card on behalf of the IAM?
A. No, I didn't.

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Q. What happened, is there anything further that occurred in that meeting? A. No.

Q. You stated previously that you signed a membership card? A. Yes.

Q. Do you recall whether or not there was any discussion or conversation with respect to any other documents?
A. Well, there was conversation of the papers we were to sign, but I couldn't tell you what was said, because we didn't go into that until the future day.

Q. Will you state whether or not there was anything else signed that day, or was it just the membership cards?
A. To the best of my knowledge, it was just the membership cards.

Q. (By Mr. Farkas) What is your next recollection of what happened after this meeting broke up? A. Well, we went back to work and we got pretty well rode over by some of the girls out there.

Q. When you came out of the office you testified previously

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there was some conversation with Mr. McFann, did you not? A. Yes.

Q. Who was present during that conversation? A. There was quite a few girls gathered around.

Q. You mean in addition to the five who were in there? A. Oh, yes. I couldn't state exactly who they all were.

Q. And, who was the conversation with? A. McFann.

Q. And, who else? A. It was just him and the girls.

Q. What was the subject of the conversation? A. Of how the girls were picked out in the office.

Q. Do you recall what that conversation was? A. Well, he was asked about how we were getting to—that was the answer he gave, we were chosen at random.

Q. (By Mr. Farkas) Miss Long, where did this conversation take place? A. Between the time clock and the office door.

Q. All right, and who was present, that is? A. Mr. McFann and myself and I believe Donna Munger was there.

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and several other working girls from the shop.

Trial Examiner: Motion to strike is denied.

Q. (By Mr. Farkas) Now, going back to the meeting for just a moment, do you recall whether or not there was any discussion during the course of the meeting with respect to the IAM's being in the plant as a Union? A. No, I don't.

(502)

Q. Do you recall whether there was any conversation or statement by Mr. Schwartzmiller as to how the IAM was there or why the IAM was there? A. I don't think they explained why they were there.

Q. Now, you mentioned a second meeting or another meeting in which you were in the office. Is that correct?

A. Yes.

Q. When was that? A. The next afternoon.

Q. Was that during your shift, your second shift? A. We came in early.

Q. Do you recall when that was? A. It was after dinner, either one or two o'clock.

Q. And, who told you to go in the office? A. Well, we were told the day before that we were to come in early the next day and discuss the finer points of the contract.

Q. Who told you that? A. Schwartzmiller.

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Q. So the next day you went into the office? A. Yes.

Q. Who else was present? A. Well, the company lawyer, Westbrook and there was several others there and I hadn't worked there too long and I didn't—they all looked alike to me.

Q. All right. Now, how did that—was there any conversation that day or during the time that you were in there? A. Yes, there was conversation over the contract.

Q. Miss Long, I am going to hand you what has been received in evidence as General Counsel's Exhibit No. 3. This consists of three parts, so to speak, one part consisting of eleven pages at the end of which page eleven there appears two signatures, one Mr. Adams, Vice President and one, Mr. V. L. Schwartzmiller. Then another part entitled "Exhibit B," which consists of two pages signed by Bryan Manufacturing Company and by International Association of Machinists and under that name of the Union, there appears six signatures and the date of this

is September 2nd. Then there is a third portion of this exhibit which is marked "Exhibit A," which consists of two pages and on the second page it is dated August 17th and there appears a number of signatures there, one, on behalf of the company signed by Mr. Adams, one on behalf of the International Association of Machinists, signed by Schwartzmiller and a number of signatures, about fourteen under the heading, "Tem-

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porary Bargaining Committee for Reading Plant." Right now, will you look at these three portions and tell me what if any portion of that was the subject of this meeting? You mentioned that there were parts of the contract taken up. A. What was that question?

Q. Have you examined those? A. Yes.

Q. What if any portion of those documents was discussed or taken up or the subject of that second meeting that you were at? A. There was portions of all of these with room at the bottom for names to be signed and we signed several. I signed this one here; that's my signature, but it wasn't signed at the time.

Q. I beg your pardon?

Trial Examiner: You are pointing to the last page of the document. Your signature is on the last page, is it?

The Witness: Yes.

Q. (By Mr. Farkas) Would you look at that last page again and would you read the date on that? There are two dates apparently on there. What are those two dates?

A. Well, there is August 10, 1955—

Q. I beg your pardon? I didn't hear that. August 10, 1955 and what is the other date? A. August 17, 1954.

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Q. And, do you recall the date on which you signed?

A. Yes.

Q. What date was that? A. August 17th, 1954.

Trial Examiner: Let me see the document, please. I think that the document will show that the date on the top of this last page is actually a part of the sentence which comes over from the page before. From the context, it is clearly referring to an earlier document.

Q. (By Mr. Farkas) Do you see that, Miss Long? In any event you are satisfied with the date, that it was the 17th? A. Yes.

Q. All right. Now, will you look at that portion of the contract marked Exhibit B and what is the date appearing on there?

Mr. Poulton: I'm going to object to this. I believe the document speaks for itself. It is in evidence.

Trial Examiner: What is the reason?

Mr. Farkas: I want to get this witness's recollection clear so she knows exactly what went on, what she signed and what she didn't. I think if she looks at the document and familiarizes herself, it will assist her. That is my only purpose. I'm not trying to attack the dates appearing.

Q. (By Mr. Farkas) Can you tell me after looking at that whether or not you signed that portion of the contract?

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A. No, I didn't.

Trial Examiner: That is the portion marked "B" and is dated September 2, is that correct?

Mr. Farkas: September 2, that is correct.

Q. (By Mr. Farkas) Now, having examined these portions of the contract, can you tell us what occurred during the meeting of August 17th when you were present and signed that one portion which you say that you have just testified that you had signed? Who was present from the Union? A. Schwartzmiller.

Q. Was there anyone else present? A. Not from the Union.

Q. All right. Who was present from the Company, if you can recall? A. The two I recall are the company lawyer and Westbrook.

Q. Now, was there any conversation with respect to the portion of the contract which you signed? A. No, the portion we signed was the portion they read off or they didn't read it completely, they explained it to us, what was in there and we signed the sheets that they were on.

Q. Well, how—what occasioned your signing? Who told you to sign, if anyone? A. The—Schwartzmiller.

Q. What did he say? A. Well, they spread the sheets out and there was more than one,

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and said we were to sign them and, "sign them."

Q. Prior to this date, August 17th when you were present in the office there and signed that portion of the contract, did you have any meeting among the girls who were in that office, either with Mr. Schwartzmiller or without Mr. Schwartzmiller? A. Only that first time we was called in the office was the first time I seen him and that next day was the second time I ever seen him.

Q. Now, did you have any conversation among yourselves, you girls, with respect to the contents of the documents which you signed? A. No.

Q. Was there any discussion as to why you were signing that? A. No.

Q. Did anything else occur at that meeting, if you can recall? A. Such as?

Q. I don't know. I am asking you whether anything else occurred? A. Well, there was a lot that occurred.

Q. Will you tell us? A. If I knew specifically what—I don't know.

(507)

Q. I don't know. I am asking you whether anything else occurred. I wasn't there. I am asking you what occurred if you can recall with respect to the matters you were discussing. A. We went into the office and signed the papers and that was about it.

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Q. How long were you in there? A. We was in there, well, it seemed like about two and a half hours.

Q. All right. Now my question was, is, was there any explanation as to what this was all about, what you were in there for and what you were to do? Let me ask you this question, Mrs. Long, did you know why you were there? Did you know then why you were there? A. Yes, we knew the day before. They told us the day before.

Q. What was the reason for your being there? A. We were there to sign the papers for the Union.

Q. Prior to this time when you were in the office, you say that there was no discussion among the employees as to the contents of those papers? A. No.

Q. Was there any conversation between Mr. Schwartzmiller and you individually or as a group as to the pros and cons as to what that portion of the contract contained? A. No.

Q. Will you state whether or not prior to the time you affixed your signature to that, whether or not you had ever seen that portion of the document—of the contract before? A. No, I had never seen it.

Q. Now, did you as a member of the IAM attend any meetings, that is, employee meetings I am speaking of now?

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A. Yes, I believe I did.

Q. Do you recall when that was? A. I remember being to the meeting where they elected Iola Joice.

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Q. All right, do you recall what time of day that was?
A. It was after work.

Q. And, I believe you testified you worked the second shift? A. Yes.

Q. That would be sometime in the evening, would it not?
A. Yes.

Q. All right, can you approximate the time? A. Well, I believe we were off about an hour early, that would be about midnight.

Q. Where was the meeting held? A. Up to the lodge hall in Reading.

Q. And, approximately how many people were there as nearly as you can recall? A. Well there was—I should say there was at least thirty-five.

Q. All right. Who chaired the meeting, if you can recall? A. I believe Schwartzmiller did.

Q. Were you there during the—throughout the entire meeting? A. Yes.

Q. Did you in any way participate in discussing any matters during the course of the meeting?

510 .

A. No.

Q. Do you recall whether or not there was any conversation between Mr. Schwartzmiller and any employee from the floor? A. There was several conversations, but I didn't pay too much attention to any of them.

Q. Do you recall whether or not there were any membership cards signed that night? A. I don't recall whether there were any.

Q. Well, what took place? After Mr. Schwartzmiller called the meeting to order, what happened as nearly as you can recall? A. Well, the nearest I recall was they wanted to read just a portion—

(510)

Q. Who is "they?" A. Well, Schwartzmiller, of the contract, and some girl yelled out and said, "Read it all."

Q. Who was that, do you know? A. I don't know.

Q. All right. What did he say? A. As far as I know, he read it all.

Q. Is there anything else that occurred? A. Just the election with Lola and Clay Munday.

Q. Have you now told us as nearly as you can recall, what took place there? A. Yes.

Q. And, to the best of your memory without the refreshing your

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recollection, you have now related what occurred there? A. Yes.

Q. Can you recall, Miss Long, whether or not there was any conversation between Mr. Schwartzmiller and Miss Moses? A. I can't recall, because I didn't know hardly any of the girls at the time, being new at the shop.

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Cross Examination

Q. (By Mr. Gallucci) Miss Long, regarding the conversation that took place, I think you said either before or after you went into the office to that first meeting of August 16th you quoted Mr. McFann as having made some explanation as to why you were there? A. Yes.

Q. Do you recall specifically who, whether anybody made a request as to—for information as to why you girls had been called in? A. Because it was a request, but I don't know who made it.

Q. You don't remember who made it? A. No.

Q. Do you remember what the question was? A. I don't remember the complete question, but it all added up to,

they wanted to know how they were chosen and I was one of those chosen.

Q. Now, when did this take place? Before or after?

A. After.

Q. After you had left? A. We had left and resumed work. This was later on.

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Q. How much after the meeting? A. Well, I should judge that it was around supper time.

Q. And, how did Mr. McFann happen to be there, do you know? A. I don't know how he happened to be there.

Q. He was there? A. He was out there and we walked up to where he was at.

Q. And, he was asked why those particular girls had been chosen? A. Yes.

Q. And, isn't it a fact, Miss Long, isn't it a fact that you recall that Mr. McFann's explanation was that he had been asked to come out and get you girls, that he didn't have any idea why you were picked, whether it was to be impartial or neutral or in other words, isn't that true? A. I don't know anything about that. All I know is he said he picked us at random.

Q. That he himself picked you? A. Yes, and I seen him myself at the time clock before we went in, so I figured that's what he was doing.

Q. You saw him at the time clock before you went in? A. Yes.

Q. Did he have anything in his hands? A. No, he was going up and down the time cards.

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Q. And, your testimony is that he had told you that he had picked you girls out himself? A. He says, "You have been picked at random."

(515)

Q. By whom? A. He didn't say by whom.

Q. Mr. McFann didn't tell you who had picked the girls, then? A. No.

Q. Did he make any explanation as to what he meant by "at random?" A. Yes, he said that certain girls was picked from certain jobs and it was more or less "eenie meenie, minie moe" picking.

Q. He didn't tell you who had picked them, did he? A. No.

Q. Did he say, "I have picked you, Mr. Westbrook has picked you, we have picked you," or did he say, "Your girls have been picked." What did he say? A. Well, to the best of my knowledge, he said he had.

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516

Q. Now, I again would like to go into this question of who picked whom, because it is important and your memory as to what he said regarding who picked whom is not crystal clear; if it is not, I would like you to admit it. A. I don't know if he picked us or not. All I know is he said he did.

Q. Well, I am asking you to testify as to what he said. A. He says that you have been chosen at random.

Q. Now, that's correct. That's at least the second time you have made that statement. He said, "You have been chosen at random." Is that what he said, or did he say, "I picked you," referring to himself. A. Well, I wasn't through. He says, "You have been chosen at random. I've gone through the cards and tried to get a girl from each department."

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Q. When you went into this meeting, this first meeting to which you were called, you say Mr. Westbrook was there? A. When I went into the first meeting—

Q. To which you were called. A. You mean on the 16th?

Q. Well, when was this first meeting? A. On the 16th.

Q. That's the one I refer to.

Mr. Farkas: I don't hear you, Mr. Gallucci, I'm sorry.

The Witness: On the first meeting, I didn't recall the any of the shop gentlemen there. Westbrook was there and he introduced Schwartzmiller to us.

Q. (By Mr. Gallucci) Now, in regard to this introduction, did he take each one of you girls and say, Miss so and so, Mr. Schwartzmiller; Miss so and so? A. No.

Q. Nor isn't it a fact that he said, "Girls, this is Mr. Schwartzmiller whom I believe you know," or words to that effect?

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A. He didn't say, "whom I believe you know."

Q. Do you remember what he did say? A. All he said was that he was from the Union.

Q. Who said he was from the Union? A. Mr. Schwartzmiller—or Mr. Westbrook said that Mr. Schwartzmiller was from the Union.

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Q. (By Mr. Gallucci) In your testimony here answering Mr. Farkas's questions here, you said that you were brought into the room and were told something—I got the impression as I recall, something was signed on the 10th. Is that correct? A. Yes.

Q. Who told you that something was signed on the 10th? A. I don't recall exactly who it was.

(522)

Q. Did anyone tell you it was signed on the 10th? A. No.

Q. Did—was anything said as to who had signed anything on the 10th as to who the individuals were or the parties were? A. The Company and the Union.

Q. And, what was said in that regard? A. To the best of my knowledge they said—

Q. Who said? A. I didn't recall who said it. Want me to go on?

Q. By all means. A. To the best of my knowledge, they said there had been an agreement signed between the company and the union to let the union in the shop and have them signed on the 10th.

Q. Your testimony is that someone said a document was signed

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on the 10th to let the Union in the shop? A. Yes.

Mr. Gallucci: I think that the testimony will bear me out that you testified previously that you went into a meeting first on the 16th.

Q. (By Mr. Gallucci) Is that correct? A. Yes.

Q. And it was at that meeting that you were told that something had been signed on the tenth? A. Yes.

Q. Not the meeting of the 17th? You are now testifying about the meeting on the 16th?

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A. No. It was said at both meetings. I mean, more or less.

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Q. Again I refer to the word "signed." In your testimony you have stated that someone said that an agreement had been signed and I am asking you whether or

not it isn't true that no one said that an agreement had been signed, but there may have been a proposal there for your consideration, but I am asking you whether or not you wish to repeat yourself that the exact word used was that an agreement had been signed? A. I wish to repeat myself.

Q. Now, you are saying that the word "signed" was used? A. I'm saying that my statement was true.

Q. What statement? A. What are you talking about.

Q. I am talking about the word "signed." Do you understand my question? A. No.

Q. I realize this happened a long time ago. My question is this. Isn't it entirely possible that the word "signed on the tenth," "signed" may not have been used at all, but it was merely an explanation of what had been proposed on the tenth? That is my question. A. It is possible.

Q. When, to your own knowledge, to your own first hand knowledge, knowledge acquired by your own senses, was anything signed? A. When? _____

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Q. First signed in your presence? A. Oh, when was it first signed?

Q. In your presence. A. When was anything signed by whom?

Q. By anybody. A. On the 16th.

Q. On the 16th.

Trial Examiner: Just a minute now. You asked anything, and this witness's testimony shows that there was something on the 16th. Are you talking about a contract or are you talking about membership cards?

Mr. Gallucci: I am talking about—well, what was signed on the 16th?

The Witness: The membership cards to get into the Union.

(528)

Q. (By Mr. Gallucci) All right, now I am going to show you—or rather, you show me where does your name appear in this General Counsel's Exhibit 3? A. Right there.

Q. Myrtle Long. And, were you in the room when this document was signed? A. I signed it.

Q. Were you there to see other people signing it? A. Yes.

Q. Do you remember William Jack signing it?

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A. No.

Q. Do you remember—William Jack's name is the first on the list. You remember him signing it? A. No.

Q. Did you remember the second name, Florence Napier? Do you remember her signing it? A. I don't even know Florence Napier.

Q. Do you remember Ruth Young? A. No. See, those were all—

Mr. Farkas: What was that, Miss Long? I didn't hear you.

Mr. Gallucci: "I didn't know the girls."

The Witness: They were day girls and we were night girls.

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Q. Who do you recall signing it? A. The five girls that went into the room. There was the day crew, too.

Q. And, each one of them signed it? A. Yes.

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Q. (By Mr. Poulton) On the 16th of August, in the company

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office, did you sign a membership application for the International Association of Machinists? A. I signed a membership card, yes.

Q. That was a membership card, it wasn't an authorization card, is that correct? A. A little card, just like that.

Q. Do you remember whether it was a membership application or an authorization card? A. To the best of my knowledge, it was an application.

Q. Membership application, right? A. Yes.

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Eugene McFann

a witness called by and on behalf of the General Counsel being first duly sworn, was examined and testified as follows:

Direct Examination

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Q. Now, when you were first employed with Bryan Manufacturing Company, in what capacity were you hired?

A. Plant Superintendent.

Mr. Gallucci: Mr. Trial Examiner, in order to get to the substance of the facts needed for you to make a ruling on that 43 (b) request, I don't think it is relevant as to what he did and he came with the company.

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Trial Examiner: I think it is very material to know just what the man's position is, especially at the present time.

Mr. Gallucci: Yes, at present.

(535)

Trial Examiner: What is your present position with the company?

The Witness: At the present time, I am the plant manager.

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Q. And, when did you become plant manager? A. Oh, July of '55.

Q. Can you recall from your own knowledge or if you have avail-

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able any documentary evidence which will help you to answer the question, as to how many employees there were on the pay-roll in the unit covered by the contract on August 10th? A. I don't know offhand.

Q. 1954.

Trial Examiner: You refer to the unit covered by the contract at the Reading plant?

Mr. Farkas: Yes, sir.

The Witness: I believe it would be one hundred forty, approximately. I wouldn't know without actually counting them.

Q. (By Mr. Farkas) Approximately 140, you say? A. Yes. What date was that?

Q. August 10, sir, 1954. A. I would say that was correct.

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Q. Did you participate in the negotiation of the contract with the IAM covering the Reading and Hillsdale plants as a combined unit under one contract? A. Yes, sir, I did.

Q. And, when did the negotiations for that contract first begin? A. It was the latter part of August, I couldn't give you the exact date. I'm not sure.

Q. Who else participated in the contract negotiations?

A. The committee at that time.

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Q. Would you name the committee? A. I could name—I don't know if I could name all of them. I could name most of them, I believe. Anna Perridine.

Q. Who is that? A. Anna Perridine,—I'll correct it, Anna Geary.

Trial Examiner: You better get the spelling of any of these that you don't have.

Mr. Farkas: Before you proceed, Mr. McFann, I'm going to have a document marked here which may be of some assistance to you. Would you please mark this for identification as General Counsel's Exhibit No. 6?

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. Farkas) I hand you what has been marked for identification as General Counsel's Exhibit No. 6, a document which purports to be an agreement between Bryan Manufacturing Company and the International Association of Machinists. Would you please examine that and tell me if you have ever seen that before or a copy like it? A. Yes, sir. I have one in my pocket.

Q. I am going to substitute a fresh copy, Mr. McFann and hand you that. A. I've seen it. I have a copy of it.

Q. Would you just glance at it and satisfy yourself that it is

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an accurate printed copy? A. I would say that it was, without reading it over entirely, I would say that it was.

(542)

Q. All right. Now, going back to my previous question to you as to who participated in the negotiations, can you by consulting that contract, tell me who participated? Whether that contract bears the names of anybody who participated in the negotiations? A. Yes.

Q. Would you identify the page, please? A. It is on page 24.

Q. Approximately how many employees participated in the negotiations? A. Six employees.

Q. And, those six employees are listed on page 24, are they not? A. Yes, sir.

Trial Examiner: There are seven people listed.

Mr. Farkas: Yes, sir. I am about to clarify that, Mr. Examiner.

Q. (By Mr. Farkas) Am I correct, Mr. McFann, the last name, Carl Cederquist is not the name of an employee of the Bryan Manufacturing Company? A. No, it is not.

Q. Who is he?

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A. He is a business agent of the International IAM.

Q. Now, when did the negotiations for that August 30 contract first begin? A. I would say that negotiations began—it was either two or three days prior to the 30th and negotiations continued, actual negotiations, only continued for two or three days.

Q. I'm sorry, had you answered? A. That's the answer.

Q. Now, about how many meetings did you have? I speak now of bargaining conferences between the company on the one hand and the union on the other? A. By that, just so that I am clear, by that you mean individual conferences before we—or do you mean, by conference, you mean over one evening or something of that sort?

Q. Perhaps I should go back, Mr. McFann. How did the question of a contract covering the Hillsdale plant as

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well as the Reading plant first arise? A. Well, the question covering the two plants arose over the fact that at that particular time there was proceedings to buy a second plant, purchase a building.

Q. At the time you negotiated, when I say you, I speak of you in particular as a representative of the Bryan Manufacturing Company. At the time you negotiated with the Union, and held bargaining conferences looking toward the execution of a contract, the entering into a contract, had Bryan Manufacturing Company as

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yet purchased the Hillsdale plant? A. I am not real sure of that. I am not positive of that. As I understand it, it wasn't—the deal wasn't closed. I think if I recall right, it was an option.

Q. Yes. And, when did you as plant manager first learn that a new plant had actually been acquired or as you put the words, that the deal had been closed? A. Frankly, I don't know when I did hear. I know that I did hear, but I don't know exactly.

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Q. I don't know whether you have read far enough, but I believe there is reference in there to a statement which you made. Now, I just ask you that in order to assist you in refreshing your recollection. Can you recall, having read further, whether or not on August 31 announcement was made by you of the signing of a contract covering the Hillsdale plant? A. Yes, sir. That's true.

Q. Do you recall whether or not the announcement was given to the press by you? A. Yes, in part. This isn't all of mine.

Q. Well, I didn't mean to imply.

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Trial Examiner: When you say the contract, are you talking about this labor agreement or a contract for the sale of the plant and properties? Which contract did you refer to?

Mr. Farkas: My last question, and I suppose I should clear that up, my last question had reference to the signing of the contract with the IAM.

The Witness: That's right.

Trial Examiner: You, according to your recollection after looking at this paper, you made an announcement that the contract that you had been looking at here, this labor union agreement had been signed, is that correct?

The Witness: Yes.

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Q. (By Mr. Farkas) Let me ask you this question, sir. Specifically with respect to the closing of the deal, purchasing the Hillsdale Plant, did Mr. Westbrook say anything to you indicating that the deal had been closed on this date, the 31st or prior to that date, if you can recall?

A. I don't really recall. I mean, the only thing I could really tell you about is what I have already told you, that at the time the negotiations first started, I was told—I believe—I'm not even real sure of this, but I think I was told there was an option. I know an option was mentioned on the building at that time, and as to—

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Q. When do you fix that date? Approximately when?

A. Well, at the time I was told I would say—let's see, the contract was signed the 30th, is that correct?

Q. Yes, sir. A. Well then, I would say it was approximately the 28th. I wouldn't even be sure of that.

Q. August? A. Yes.

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Q. On or around that date? A. Yes.

Q. All right, now one further question along this line. Do you recall whether or not any other individual either directly representing the Bryan Manufacturing Company or indirectly representing them ever indicated to you anything with respect to the date of acquisition of purchase of the Hillsdale Plant? A. Other than what I have already stated?

Q. We spoke of Mr. Westbrook. A. Yes.

Q. Are there anybody else at all from the plant or the lawyers or anyone else who represent the company, indicate to you at any time? A. I heard Mr. Westbrook and Mr. Probst discussing it, but not as to the exact date as to when they—

Q. Do you recall when that discussion occurred? A. I would say that was probably the 28th, too.

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Mr. Farkas: I offer in evidence, General Counsel's Exhibit No. 6 which is a printed copy of the contract.

Trial Examiner: Any objection to its being received in evidence?

Mr. Poulton: I have no objection.

Trial Examiner: Hearing no objection the document is received as General Counsel's Exhibit 6. Do you have a duplicate?

Mr. Farkas: I believe we can get a duplicate. It is my understanding that a duplicate will be available.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

Q. (By Mr. Farkas) Now, with respect to this new contract which I believe you indicated was signed on the 30th of August— A. Yes?

Q. Will you tell me again how the negotiations, looking toward that contract, first arose? A. Well, the negotiations first arose, I received a letter that we were to negotiate—well, frankly I think at that particular time, I think the letter came to Mr. Westbrook. I don't recall, but at least I read the letter, I know that, that negotiations were to be opened for wages. And, at that particular time, I don't recall whether Mr. Westbrook was out at the plant that day or now, although I am sure either I gave him the letter or I told him about the letter.

Q. Who was that letter from, Mr. McFann? A. I believe it was from Mr. Cederquist, but without the letter, I couldn't say for sure. To my knowledge, I think it was signed by Mr. Cederquist and I called Mr. Probst at that time and told him about receiving the letter and he told me at that time that there were—I don't know whether it was the first letter or not. I received more than one letter asking about setting a date for negotiations and—but I wouldn't swear whether it was the first letter or maybe a letter that came later that Mr. Probst advised me that there were charges pending

and that at that time he wouldn't advise us to go ahead with any negotiations.

Q. When this conversation with Mr. Probst—it was right after you got the letter from Mr. Cederquist? A. Yes, but I wouldn't say whether it was the first letter received or whether that was a later date. I am not sure.

Q. And, the gist of that letter from Mr. Probst was not to go ahead in view of pending charges? A. At that par-

ticular time he said no, that I was asking him as our lawyer when we could set a date which was the question by Mr. Cederquist as to when we could set up a date that would be satisfactory to everyone.

Trial Examiner: Did you locate Mr. Probst by letter or by phone?

The Witness: By phone.

Q. (By Mr. Farkas) And, Mr. Probst indicated to you by phone that in view of the charges he did not advise you to proceed at that time? **A.** That is correct.

Q. All right. Now, I believe you testified that there were negotiations? **A.** We later had negotiations, yes.

Q. Will you now tell me what occurred to cause you to negotiate after your counsel had indicated that he advised you not to?

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A. Our former contract stated there was to be negotiations for wages, monetary things at the end of one year which would have been August 10 of '55. And, when that date passed, it might have been one or two days prior to or on that date or one or two days after August 10. The Union committee informed me that they had formed a meeting and that they had voted a strike vote if we didn't go on with negotiations.

Q. With respect to what matter? **A.** With respect to the rates, monetary.

Q. All right. Will you continue? **A.** Well, after the committee had told me of its meeting and informed me that a majority of the people had voted for a strike if we didn't go ahead with negotiations and recognize the contract already in force, I again contacted Mr. Probst and told him of the situation and he said that he would let me know of a date to set up and that I should tell them that we would, we would go ahead and negotiate and he would have to give me a date at a later time.

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Q. Now Mr. McFann, you are familiar of course, with the terms of the August 10, 1954 contract, are you not?

A. Fairly familiar with them. I have dealt with them quite often.

Q. It is true is it not, that that contains a no strike clause? A. Yes, I believe it does.

Q. And, do you recall whether or not there was any statement

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made to the committee with respect to the contents of the contract, the no strike clause, after they indicated that they had taken a strike vote? A. Not to my knowledge.

Q. Do you recall whether Mr. Probst had said anything to you about the contract containing a no strike clause?

A. No, he didn't at that time.

Q. Then after the committee had indicated that they had taken a strike vote, you consulted with Mr. Probst and then notified the committee that you would negotiate with them? A. That's correct.

Q. With respect to wages? A. That's right.

Q. Now, is that what the negotiations concerned themselves with? Wages and wage rates? A. Actually, at the time negotiations were taken up is as I've already stated, was approximately the first I'd heard of the new building and at that time they asked about opening a contract or signing a new contract.

Q. Who asked? A. Mr. Westbrook, I believe, asked. Well, frankly I can't say. I don't know, because it was new to me at that time too. It was my first knowledge of it.

Q. Now, let's get down to exact meetings. After you notified the committee that you would negotiate with them, this was after.

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you consulted with Mr. Probst? A. Yes.

Q. You did have a meeting? A. That's right.

Q. Now, about when was that? A. I am not sure of the exact date. I think it was one or two days prior to the signing of the contract. It could have been the 28th or the 29th.

Q. Are you quite satisfied that it would not have been prior to that time? A. I don't believe so.

Q. And, you had a meeting around the 28th? A. Yes, of August.

Q. Twenty-eighth or twenty-ninth of August. And, what was the result of that meeting? First of all, who was present? A. Well, the people that were present were the same people that signed on this page 24, whatever it was here, people I started to name which consisted of the committee, the business agent, Mr. Cederquist, Mr. Schwartzmiller was there too, at that time. Mr. Westbrook, Mr. Probst and myself. I believe that covers everyone.

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Q. (By Mr. Farkas) Mr. McFann, taking up the thread of the context of the questioning, I believe that we left off at the point where I was asking you a question with respect to what occurred at the first meeting. I believe that you indicated at that meeting—correct me if I am wrong—you indicated at the first meeting that the subject matter was the negotiation of wage rates and wage classifications on or around the 28th or 29th of August, 1955. A. That's correct.

Q. Now, without going into the details of how much they asked for and so on, can you tell us the result of that

meeting or was an agreement reached on wage rates and classifications? A. No sir, it was not.

Q. Was an agreement reached on anything else at that meeting? A. No, there wasn't any agreement reached.

Q. Was there any plans laid for any future meetings or arrangements made? A. Yes, sir; there was. There were arrangements made for another meeting.

Q. Do you recall what the arrangements were? A. Well, the same group of people, committee, business agent,

Mr. Westbrook, Mr. Probst and myself were to meet again, but I am not sure, the next day, I believe. I am not real sure whether that was two consecutive days or whether it might have been a day in between meetings. I am not positive.

Q. Now, bearing in mind—well, strike that. Do you recall what occurred at the next meeting, the second meeting? A. Well, approximately the same thing. We went into the same things. It was a continuation of the first meeting.

Q. Discussion of wage rates and wage classifications? A. Yes. Of course, I had mentioned that—well—

Q. Well, if you want to explain something, you have that opportunity. A. There were other things discussed other than that.

Q. Such as what? A. Well, there was a discussion besides the wage rates and classifications, a discussion of a new contract.

Q. Well, how did that discussion arise? A. Frankly, I don't know. I mean, I don't know what originated the discussion. I remember the discussion.

Q. Was anything decided with respect to the new contract at the second meeting? A. Not at either of those meetings. Well, not at the first meeting.

Q. Not? Do you recall when you—strike that. Did you sign the contract eventually negotiated covering the Reading

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and the Hillsdale plants? A. Yes, sir.

Q. Do you recall when you signed it? A. On the 30th of August.

Q. Where did you sign it? A. In the office at the Reading plant.

Q. Who was present at the time? A. Well, I believe all these same people were present. I believe the entire committee was there. I am sure they signed the contract. I believe that both Mr. Cederquist and Mr. Schwartzmiller were there, Mr. Westbrook, Mr. Probst and myself.

Q. Insofar as the company is concerned, however, you were the only one signing it? A. Yes, that's correct.

Q. So that the printed material on page 24 indicating the signatures on behalf of the respective parties is accurately reproduced from the original with respect to who signed? A. I believe so.

Q. All right, sir. Now, you indicated that to the best of your memory no definite conclusion was reached with respect to negotiating a new contract at either of those first two meetings? A. Will you state that again, please?

Q. I believe you testified that to the best of your memory, no definite conclusion, no result was reached with respect to

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executing a new contract, negotiating a new contract at either of those first two meetings? A. By result, you mean that anything was finally decided upon?

Q. Yes. A. No, I don't think there was anything finally decided upon at either one of the first two meetings regarding anything.

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Q. (By Mr. Farkas) Mr. McFann, would you tell me why on August 30 you signed a contract with the International Association of Machinists covering the Reading and Hillsdale plants at your office? A. The reason it was signed on the 30th was because it had been accepted and agreed upon by both the company and the Union.

Q. All right. Now, my question which I put to you previously and I will now put again is, when you say "accepted," when was that accepted? A. On the 30th.

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Q. And, you say that—well, let me ask you, approximately how many meetings did you have with the Union before you signed the contract? A. I am not sure whether it was two or three. Again by meetings, if you mean—

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Mr. Gallucci: I think Mr. Trial Examiner, he's answered it many times.

Trial Examiner: No, this particular point has not been covered. I'll overrule the objection. Answer the question.

The Witness: Well, once again, I don't know, you didn't clarify it a while ago as to what you mean by "meetings." You mean one individual meeting, maybe fifteen minutes or so or one day that we meet with them or—

Q. (By Mr. Farkas) No, sir; I mean particular meetings. Gatherings, in other words. If you gathered together five times a day, from the standpoint of my questioning, they would constitute five meetings, a gathering in which you as a representative of the company and any others on the one hand, representatives of the Union on the other hand came together, sat down and talked about the problems to be discussed. That in the frame of

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reference in which I've been asking you constitutes a meeting. A. Yes, sir. I wouldn't even care to make a close guess, but if you would want to know the approximate figure, I would say ten to fifteen individual meetings.

Q. I see, and over what period of time would you say those meetings extended? A. Over either two or three days period.

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Q. (By Mr. Farkas) Do you know how many employees were working, if any, at Hillsdale at that time? I speak now of the time you were negotiating with the Union Committee. A. Of employees from Bryan Manufacturing Company?

Q. Yes, sir. How many employees were working at Hillsdale? A. There were none—Bryan Manufacturing employees over there.

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at that time.

Q. On August 30, how many employees were working at Hillsdale? A. None at Bryan Manufacturing.

Q. Was there any conversation between you and—was Mr. Schwartzmiller present at all these meetings? A. Yes, I believe he was.

Q. Mr. Cederquist? A. I believe they were both there.

Q. Was there any conversation with respect to their representation at Hillsdale? The Union's representation at Hillsdale? A. Yes, there was references made to the representation.

Q. Well, what was that reference or references? What were those references? A. I don't believe I could tell you exactly what was said. I mean, I remember it being talked

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about which was the reason for this—for this contract to cover both plants so they would have representation over there, but as to exactly what was said, I don't know.

Q. Can you give us in substance without telling me the exact words? Can you tell me the substance of what you mean "there was reference to representation?" A. Well, it was mentioned in an order for—or so there would be no misunderstanding about the two plants, that they would have to have an agreement to cover both plants. They should be called

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plant one and plant two, Hillsdale plant and the Reading plant. Other than that, I don't recall any, exactly.

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Q. Now, at the present time there are twenty-one employees working at Hillsdale, right? A. No, I believe there has been some more transferred. I believe the figure may be around twenty-five or twenty-six at the present time.

Q. All right, sir. Are any of the twenty-five or twenty-six or thereabouts new employees hired off the street?

Mr. Gallucci: Now Mr. Trial Examiner, I suggest that the General Counsel qualify his question as to the kind of employees he's referring to.

Mr. Farkas: All right. I think the point is well taken.

Q. (By Mr. Farkas) I speak of employees who would be in the unit covered by the contract. A. No, sir. No, I think they've all been transferred from the Reading plant.

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Cross Examination

Q. (By Mr. Gallucci) Mr. McFann, when did you become plant manager of Bryan Manufacturing Company?
A. July, 1955.

Q. What was your position prior to July of '55? A. Plant superintendent. I have been plant superintendent of Bryan Manufacturing Company from the time I started in November of '53 until July of 1955.

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Q. I have here, Mr. McFann, a list of employees, what appears to be a list of names, with addresses following each name, with the date "August 10th" written on the top. Can you identify this? A. Well, this would be a payroll record or a list of the employees on the payroll as of August 10, 1954.

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Trial Examiner: Suppose you give us, on the record, the number on each page, and then we can have the computation also shown.

The Witness: The first page is twenty-four. On the second page, twenty-three. Third page, twenty-seven. Fourth page, twenty-eight. Fifth page, twenty-four. Sixth and last page, twenty-two.

Trial Examiner: All right, now, make your computation of those six pages.

The Witness: One hundred forty-eight.

Trial Examiner: The one hundred forty-eight, then, are the names not marked with a red pencil, meaning the

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people who were in the bargaining unit on the 10th of August, is that correct?

The Witness: Yes, sir.

Mr. Farkas: May I ask a question about this? Mr. McFann, does this include or exclude that group of employees who were in the first layoff somewhere around the tenth? I don't think that date was ever set.

The Witness: This would include the employees. The layoff, to the best of my knowledge, came after the August 10th date, and this would include them. I recognize some of the names.

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Q. Did you have anything to do with the negotiation of this collective bargaining agreement? A. Yes, I did. I helped negotiate it.

Q. Can you recall, Mr. McFann, the number of employees in the bargaining unit who participated in these negotiations? A. Six employees, I believe.

Q. And was there not also someone present from the International and the Local union to represent the employees? A. Yes. Mr. Cederquist and Mr. Schwartzmiller.

Q. When did you first begin negotiating this particular agreement, Mr. McFann? A. The first meeting between the committee and Mr. Cederquist and Mr. Schwartzmiller and the company, Mr. Westbrook, myself and Mr. Probst, was, I believe, August 23rd.

Q. Can you tell us who initially requested that these meetings—or that a meeting be arranged—for negotiating a contract?

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A. The request came by a letter from the union, which was actually a sixty-day notice. I think we received that on

June—approximately the 6th of June—requesting we meet on negotiations at that time.

Q. I have here in my hand the letter dated June 6th, 1955. Can you identify it? A. Yes. That's the letter we received at that time, which is dated June 6th.

Q. Can you tell us what the import of this letter is? What this letter represents? A. This letter was a notice from the union that they wished to meet with us, a sixty-day notice they wanted to meet with us at the earliest possible date, to negotiate wages, and, however, we didn't negotiate at that time. It was quite some time after that.

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Q. You say both Mr. Cederquist and Mr. Schwartzmiller asked about setting up dates for negotiations? A. Yes, that's right. Well, it was usually by phone—I think once or twice, I can't remember which it was, I believe Mr. Cederquist, though, was at weekly meetings, and—with the committee.

Mr. Farkas: Mr. Gallucci, I don't want to object, but I wish you would try to pin Mr. McFann down to times and dates of these things. It is very general.

Mr. Gallucci: I think Mr. McFann is trying to do that to the best of his recollection.

Trial Examiner: Give us the best of your recollection. You will have opportunity for further examination, and as near as you can, give us your best memory as to when these things happened, or if you can't fix the date, the approximate time between various events. Anyway, you can give us as much of your memory of the chronology as well as the events and the time sequence.

The Witness: I wouldn't be able to actually pinpoint any of the phone calls or the times they were actually in there I can maybe give you a general time. It would have to be very general. I would say that it was probably the

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middle of June, when Mr. Cederquist was in there and asked if we could have a date set up, and I told him at that time we couldn't, and it possibly was a week after that that he called and asked again if

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we could set up a date.

Q. (By Mr. Galluci) Did Mr. Schwartzmiller also call?
A. Mr. Schwartzmiller called. I couldn't say if his was the next call. I would say the calls averaged approximately every week to ten days, someone called and asked.

Q. By "someone"— A. Either Mr. Schwartzmiller or Mr. Cederquist, and I can't remember which one called at which time.

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The Witness: What was your question again?

Q. (By Mr. Gallucci) My question was whether or not, to your knowledge, a strike vote was taken. A. A strike vote was taken, and the committee reported to me that they had a meeting.

Q. What kind of meeting. A. A mass meeting of the membership.

Q. Do you remember them telling you where they had it?
A. I don't know as they told me where they had it. I don't believe they did. I can only assume—they usually hold their

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meeting at the Legion Hall.

Q. Do you remember them telling you the number of people who attended or the size of the meeting? A. They didn't tell me the size of the meeting, although they said they had a good turn-out for that because the people were angry, dissatisfied because we wouldn't negotiate with them,

and they had voted unanimously to go out on a strike if we didn't negotiate with them.

Q. Did your contract—

Trial Examiner: Let's ask the witness if he can fix the time when this information he has just given us first came to him.

The Witness: The committee—

Q. (By Mr. Gallucci) Let me ask you this: Can you recall any incident or anything having been said to you that would enable you to pin down the date of this meeting this is supposed to have happened. A. I would say on August 9th or 10th, and the reason I recall that date—I couldn't be positive about it—but it was because the wages were to have been negotiated by that time, and as I recall, I think it was very close to that, either the 8th, 9th, or the 10th, when this information was given to me at a meeting probably of the 11th.

Q. I show you General Counsel's Exhibit Number 3, which was the contract in effect at that time, and ask you to read the

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paragraph at the bottom of the first page of Exhibit (a). Would you read it aloud, please? A. "Wage rates set forth above shall remain in full force and effect until August 10, 1955. Either party may reopen the question of hourly wage rates only on or after August 10, 1955, by giving written notice to the other sixty days before."

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Q. Can you tell us, again, when you held your first meeting? A. August 23rd, I believe.

Q. The 23rd? A. That's correct.

Q. And how many—how many meetings did you have all together? A. I would say we had approximately—well,

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possibly fifteen meetings, all together. That was over a period of three days, which was August 23rd; and there were no more negotiations until approximately the 29th.

Q. What was discussed—if you can remember—at these first meetings held on August 23rd? A. Well, the first thing that was talked about was wages, and the union at that time made a proposal for wage increases, and—

Q. Mr. McFann—strike that. I believe I interrupted you there. A. They made this proposal for wage increases. There were negotiations made for classifying, setting up different classifications that we had in the plant at that time, or I should say some newer classifications, and they also mentioned at that

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time that we would like to have a contract, enter into a contract to include the Hillsdale plant.

Q. The what plant? A. The Bryan Manufacturing Plant in Hillsdale, which they were told the company had an option for this plant, and the thing we wanted to talk about was how transfers would be made, as to what effect it would have on the employees already over there, and about seniority of employees being transferred from one place to another.

Q. At this time—rather, at the time of the first meeting, were there any employees at Bryan Manufacturing Company at the Hillsdale plant? A. No, there were no employees over there.

Q. Can you tell us what the purpose of this plant was? What the reason behind it was? A. Yes. The reason behind the additional plant was because of the increase in production. At one time we had figured on a hundred and fifty to approximately two hundred employees at Reading, originally, and through increased business that had never been expected—at least, at the time I started with the company—it was to the point where we absolutely couldn't

satisfy our customers and turn out production with the amount of space we had. We had no more room for expansion or equipment in the Reading plant. The idea was to expand our operations.

Q. Do you mean and hire new employees?

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A. No, the idea wasn't to hire new employees. The idea was we were too crowded for the floor space where we were, and the idea was to expand so we would have a more efficient plant. We had grown almost to twice the size we ever expected, and the idea was to get expansion. Not to hire employees, but to transfer employees, which was one of the things we talked about in the negotiations at that time.

Q. Did you discuss this problem or this matter of a bargaining representative for the employees at the Hillsdale plant with Mr. Probst prior to entering into the negotiations? A. Yes, we did, because we weren't sure as to which would be the best way to handle it. We asked his advice, and he said we couldn't very well transfer employees from Reading over to Hillsdale and not have a bargaining unit of some kind, not have those people represented.

Q. Were there any reasons he gave you for that? A. Well, he mentioned at that time—I forget exactly how he expressed it, but the fact if we transferred people over there—I am not sure whether he said it would be absolutely legal or not, but he inferred that it wasn't a good practice. It would be a run-away shop, to move people from one plant to another, and not to have them represented under the same contract.

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Q. (By Mr. Gallucci) When were you informed of this meeting of the committee with the membership, and their

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decision? A. I believe it was the next meeting between the committee, Mr. Schwartzmiller, Mr. Cederquist, Mr. Westbrook, Mr. Probst and myself, which was, I think, the 29th of August.

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Q. Now, getting—or going back before this mass membership meeting to which you just referred, is it your testimony that it was then the agreement of the parties that employees would be transferred from one plant to the other and retain their membership in the same union? A. That's correct, yes. In fact,—

Q. I am sorry. A. I was going to say in fact we have transferred back and

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forth, both ways.

Q. How many employees do you have at Hillsdale now? A. Approximately twenty-four employees.

Q. Have these employees all been transferred over to Hillsdale from Reading? A. With the exception of the guards.

Q. I am referring to the employees in the bargaining unit. A. The employees in the bargaining unit were transferred from Reading.

Q. Has there been any retransferring back and forth of the same employees since you negotiated this General Counsel's Exhibit Number 6? A. Yes, several times, the last being today. People were transferred from Hillsdale back to Reading, and from Reading to Hillsdale, in order to straighten out seniority problems.

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Q. Did you at any time—you or anyone else on behalf of the company—at any time take the position that no agreement on wages would be entered into until the union agreed that they would accept a three-year contract? A. No.

absolutely not. In fact, wages were negotiated, started negotiation on wages, before it was ever brought up about the contract, the three years.

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Q. (By Mr. Poulton) Mr. McFann, how many employees who were in the recognized unit, General Counsel's Exhibit Number 3, were there on August 30, 1955? A. Approximately three hundred fifty.

Q. And how many of those employees, sir, were on check-off? A. Well, approximately three hundred fifty.

Q. How many? A. Approximately three hundred fifty. There may have been a few new employees at that time.

Q. That was on August 30, 1955? A. Yes.

Redirect Examination

Q. (By Mr. Farkas) Mr. McFann, let's go back to these meetings that were held between the union and the company, the committee of the union and the company, back in August of 1955. Did I understand you correctly to say that initially it was Mr. Schwartzmiller or Mr. Cederquist or both who had contacted the company and asked for a meeting? A. Yes, that's correct.

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Q. That was, I believe, following the letter which they sent? A. Yes.

Q. Do you recall in substance the gist of the letter they had sent, as to what they wanted to talk about? A. Yes. It was wages, negotiation of wages.

Q. Anything else mentioned? A. Classifications.

Q. Was there anything else mentioned? A. Not that I recall.

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Q. Now, you also testified that the company had reported to the union committee that they would like to have a contract covering the Hillsdale plant, did you not? A. Yes, eventually.

Q. Just exactly when was that? A. I am not asking for the exact hour or date, but approximately when was that?

A. The 23rd of August.

610

Q. Now, speaking of yourself, when did you first learn the Hillsdale plant had been acquired? A. Well, as to being acquired, I knew that they were bargaining for it, or they were going in to check on an agreement to purchase the plant approximately two weeks before that.

Q. Two weeks before the 23rd? A. Yes, approximately that time. I wouldn't say for sure if it was two weeks. It could have been ten days. I don't know exactly.

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Q. (By Mr. Farkas) Mr. McFann, you also testified with respect to discussions in the meetings concerning the transfer of employees from the Reading plant to the Hillsdale plant, did you not?

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A. I did.

Q. And then your testimony was, in substance, that the committee had communicated to you that they felt the membership would be in favor of a transfer? A. That's correct.

Q. Now, what were they talking about? Did they indicate what they were talking about? A. As to being in favor of the transfer?

Q. Yes. A. Well, the big issue seemed to be, as I understand the committee, was the fact that they would be able to transfer, and it would be by seniority, by people's ability in there, and if so, they thought they would be interested from the standpoint for a lot of our employees it would be closer to their homes, and it would save a lot of people we had working there who had seniority at the plant from many miles of driving.

Q. When did the employees first learn about the possibility of the acquisition of the Hillsdale plant, so far as you know? A. When did they learn about it?

Q. Yes. A. That same meeting, on the 23rd, or about that date.

Q. Was that the first time that there was ever any discussion about transfer? A. Yes, that is correct.

Q. Now, you again indicated in the course of your testimony

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that subsequently in one of the meetings, or in one of the discussions, that the committee reported back to you—I say “you”—representatives of Management, not you in particular, that the membership was in favor of this. They used the word “this”: What were they talking about? Wage increases, transfer, or purchase, or what? A. The transfer, is what I was talking about.

Q. Transfer of employees? A. Yes, the fact that we would transfer employees back and forth from one plant to another.

Q. At that time was there any discussion between the union and the company concerning the contract covering the new plant? A. Yes. In order to make sure on the transferring back and forth, as to who held seniority rights, the contract would have to be a contract drawn to include both Reading and Hillsdale.

Q. Who indicated the contract would have to be drawn?

(614)

A. Well, Management indicated that. I don't know exactly who indicated it would have to be drawn.

Q. What position did the union take with respect to that, as to whether or not there had to be a contract in order to have transfers, if there was any position taken?

A. On the particular date of the 23rd they indicated that they would rather bring that up at the mass meeting of their membership to see how the entire membership thought about it.

Q. Bring what up?

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A. The fact that we would enter into another contract, we had to draw up a contract to cover both plants, so there would be no disagreement over the transferring of employees and so on.

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Q. Assuming there was a meeting on the 28th—and I am not holding you to that—but whether it was the 28th or the 29th, do you recall, sir, if there was any agreement on wages or wage classifications on that date? A. Yes, there was, late that day.

Q. Do you recall what the agreement was? A. Well, the agreement was the same as in the contract. I can't tell you just what it was. I believe, though—I mean I know there were increases given as far as wages were concerned, and I am certain there were other classifications set up.

Q. Now, assuming it to be the 28th or 29th, one of those two dates, was there any agreement reached with respect to whether or not a new contract would be negotiated to cover the Hillsdale plant? A. Yes, there was an agreement. It was decided there would be a new contract, and these increases would automatically—and new classifications—go into the new contract.

Q. That was agreed between the company and the union committee? A. It was agreed then, but of course the committee at that time stated they would have to take that—they wanted to read that contract, or the proposed contract, to the membership at a mass meeting.

Q. On the 28th or 29th was there a physical document in existence? A. No, I don't believe so. I believe after negotiating—I

618

mean, there had been several proposals, and bargaining back and forth, and I believe that the document actually was typed up pretty much as to what everyone understood had been agreed upon, and I think given to the union the next day to present at their mass meeting, which by the next day—I mean the 30th of August.

Q. All right, now, you say a memorandum of understanding or those things that were agreed upon were reduced to writing or typed? A. That's right.

Mr. Gallucci: Mr. Trial Examiner, I am going to object to that, to his phraseology, as to an understanding.

Q. (By Mr. Farkas) I will ask the witness again to try to sum up what that was. What was it that was reduced to writing? I won't try to characterize it. A. At which time? You mean as a result of all of these meetings?

Q. On the 28th or the 29th, if there was a physical document of any kind in existence, resulting from the negotiations, I speak of that document. A. Well, as far as a physical document, it was more or less, I would say, notes, as to part of the other contract being put into this one, and additions were written out as to what would be included in this contract, wages, classifications, and also to get an understanding in there of the people holding seniority between the Reading and the Hillsdale plants.

(627)

627

Margaret Hatfield

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

-Direct Examination

Q. Where are you employed?

628

A. Bryan Manufacturing Company in Reading.

Q. Do you recall approximately when you began to work there? A. June 30th.

Q. What year? A. 1954.

Q. 1954? A. Yes.

Q. Are you a member of any labor organization at the plant now? A. Yes, I am.

Q. What labor organization is that? A. The IAM.

Q. Can you recall when you became a member of the IAM? A. We have forty-five days in which to join. I joined about the end of that period. I think about the last part of September or the middle.

Q. About the middle part of September or the latter part of September, 1954? A. Yes.

Q. Somewhere within there? A. Yes.

Q. You say within the forty-five day period? A. Yes.

Q. Now, can you recall when you first heard of the IAM being the union in the plant at Reading?

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A. When I first heard of it?

Q. Yes, when did you first know about the fact there was a union in the plant at Reading? A. When some girls were called into the office.

(630)

Q. Now, can you recall the time, the month and date, the approximate time? A. I am pretty sure it was the 16th of August.

Q. Of what year? A. '54.

Q. Can you recall how you learned of it? Do you understand my question? A. Would you repeat it again, please?

Q. You testified you learned about it when some girls were called into the office. A. When they returned.

Q. When they returned. All right. Now, how did you yourself, personally, learn about it? A. I asked one of the girls when they returned.

Q. Who did you ask? A. Jean Edinger.

Q. What did Jean Edinger indicate to you? A. She said we were in the union.

Q. Was there any discussion as to the name of the union? A. No, I don't recall. I never heard of it before.

Q. Now, prior to that date, August 16th, will you please state

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whether or not you had ever been approached by any member of the IAM in the plant? A. No, sir.

Q. Or by any employee on behalf of the IAM? A. No, sir.

Q. Can you state whether or not prior to that date—I am speaking of August 16th, 1954—whether or not you had been approached by any representative of the IAM or any employee on behalf of the IAM anywhere, in or outside the plant? A. No, sir.

Q. Do you know Mr. Schwartzmiller? A. Yes.

Q. When was the first time that you saw Mr. Schwartzmiller? A. I think it was the next day after we learned of the union coming in, he was in the factory.

Q. Did you have any conversation with Mr. Schwartzmiller then? A. No, I didn't.

(630)

Q. Were you present when there was any conversation between Mr. Schwartzmiller and any other employee?

A. No.

Q. Now, prior to August 16, 1954, did you ever receive or see any handbills, posters, or circulars from the IAM?

A. No, sir.

Q. Have you ever attended any meetings of the IAM?

A. Yes.

631

Q. Can you recall the first meeting, when the first meeting occurred that you attended? A. I think it was the 17th of August. I think it was the next day after we got the contract.

Mr. Gallucci: What was your answer?

The Witness: You want me to tell you?

Trial Examiner: Repeat the answer.

The Witness: I think it was the next day after we got the contract.

Q. (By Mr. Farkas) Were you present throughout that meeting? A. Yes, sir.

Q. Do you recall whether or not there was any conversation between Mr. Schwartzmiller and any employees at that meeting? A. Yes.

Q. Did you have any conversation with Mr. Schwartzmiller? A. No.

Q. Do you recall who did among the employees? A. Yes. Ruth Moses had a question.

Q. Do you recall what Ruth Moses questioned him about? A. She asked him who asked him to represent us.

Q. Do you recall what Mr. Schwartzmiller said? A. I don't know if this is his exact words or not.

Q. To the best of your memory? A. He said he heard someone was going to be sent there to interrupt the meeting.

Q. Now, with respect to the question that was asked of him,

632

what did he say? A. I can't recall. I do remember him saying that, though.

Q. Have you attended any other meetings of the IAM?

A. Yes.

Q. (By Mr. Farkas) Miss Hatfield, you testified a few moments ago you became a member of the IAM sometime in September of 1954, is that correct? A. I think so.

Q. Would you please state why you became a member of the IAM? A. Because we had to if we wanted to work there.

Q. What do you base that statement on? A. Mr. Schwartzmiller said, indicated, anyway, that if we didn't join the union we couldn't work there.

633

Q. When did this happen? When was this statement made by Mr. Schwartzmiller? A. I think it was at that first meeting.

Q. Miss Hatfield, were you at a meeting when there was discussion about the August 30, 1955 contract? A. Yes, I was.

Q. At a meeting of the IAM? A. Yes.

Q. Can you recall the time that that meeting occurred? A. The time of day, you mean?

Q. No, the date, approximately; the approximate date. A. It was the latter part of August, but I don't recall just what day it was.

Q. Do you recall whether or not—well, strike it. Can you recall whether or not there was one such meeting or more such meetings? I am speaking of the meetings in which the August 30, 1955 contract was discussed. A. That was the only meeting I know of.

(633)

Q. Can you recall who chaired that meeting? A. That's for the new contract, isn't it?

Q. Yes. A. The president and Mr. Schwartzmiller.

Q. Who was that? A. Imojene Sperbeck was the president, and Mr. Schwartzmiller was there.

634

Q. Was there, you say? A. Yes.

637

Cross Examination

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Q. (By Mr. Poulton) Miss Hatfield, according to my notes you stated a lawyer came up from Detroit and talked to the girls, is that correct? A. I said he brought the contract to the meeting. He handed it to Mr. Schwartzmiller, and Mr. Cederquist, and then they introduced him, and they applauded and then he left.

645

Q. The May meeting, 1955, was there any discussion of the proposals the union was going to submit to the company, on a new contract? A. Not on a new contract, but there was some talk about wages

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and a strike and so forth. I don't know if that was in May but I say that was the discussion.

Q. There was a discussion prior to August 30th? A. As to a new contract?

Q. Yes. A. No, I don't recall any.

Q. Was there a discussion as to new wages? A. I don't recall when they came up, but there was some.

Q. It was prior to the latter part of August, wasn't it?
 A. Not before the 10th, because we weren't eligible to ask for wages until the 10th.

Q. Prior to the 10th of August—strike that. Between August 10th and August 30th there was a discussion of wages at one of the meetings? A. I imagine so. We were eligible then to ask Management for a raise.

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Mr. Farkas: I wish to indicate I am calling Mrs. Sperbeck under 43-B.

Imojine Sperbeck

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Mr. Gallucci: Before the General Counsel proceeds may I ask on what basis the General Counsel calls this witness under 43-B?

Mr. Farkas: She is president of the Local.

Mr. Poulton: I have no objection.

Mr. Farkas: Unless the witness testifies to the contrary. It is my understanding she is.

Direct Examination

Q. (By Mr. Farkas) Miss Sperbeck, what is your address? A. Reading, Michigan.

Q. Are you now employed? A. Yes.

Q. Where do you work?

665

A. Bryan Manufacturing Company, Reading, Michigan.

Q. How long have you worked there? A. Since December 14, 1953.

(665)

Q. During the course of your employment have you worked steadily for the most part? A. For the most part, yes.

Q. There have been occasional temporary absences? A. Yes.

Q. Are you now a member of any labor organization? A. Yes, sir.

Q. What labor organization is that? A. The AF of L.

Q. Would you give us the full name? A. Of the AF of L.

Q. Of the organization of which you are a member. A. American Federation of Labor, International Association of Machinists.

Q. Do you hold any office in that organization? A. Yes, sir.

Q. What office is that? A. I am the president.

Q. Can you recall approximately when you became president? A. The first part of January, 1955.

Q. And you have been president ever since? A. Yes, sir.

666

Q. Prior to that time did you hold any office? A. I was a committee member.

Q. Do you recall when you became a committee member?

A. Yes. The middle of August of '54.

Q. Now, specifically can you recall approximately the day, or is that your best recollection, around about the middle of August? A. It was, I would say, anywhere between the 16th and 17th, one of those two days.

Q. Can you recall when you became a member of the IAM? A. About the last part of August of '54.

Q. And can you recall the occasion for your signing a membership card? A. Yes, there was a signed contract in the plant, and after that I signed a membership application.

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Lillie Shaffer

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Farkas) What is your address, Miss Shaffer? A. Route 1, Osseo, Michigan.

Q. You are appearing here in response to a subpoena, are you not? A. Yes, I am.

Q. Where are you employed? A. Where?

Q. Yes. A. At Bryan Manufacturing.

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Q. How long have you worked there? A. It will be two years January the 11th.

Q. So that you began working there in January of 1953? A. '54.

Q. '54. Two years this January? A. Yes.

Q. Has your employment there been, for the most part, regular? A. Yes, it has.

Q. When was the first time that you knew of the existence of the IAM in the plant at Reading? A. I think it was the 16th of August.

Q. And can you please tell us how you learned of that fact? A. Well, I was called into the office.

Q. By whom? A. Mr. McFann.

Q. Were you called in by yourself or were there any others, or what, will you tell us, please? A. There were others.

Q. Who were they? A. There was Jean Edinger, Velma Rooks, Donna Munger,—that's all I can remember.

(683)

Q. About when did this occur? What time of day did it occur? A. It was probably around five.

Q. You say you were called into the office, or sent into the office?

684

A. Yes.

Q. Who was there when you got there? A. I believe Mr. Westbrook and Mr. Schwartzmiller.

Q. You mentioned that Mr. McFann sent you in. Was Mr. McFann there? A. No, he wasn't.

Q. Now, will you tell us what occurred in the office, to the best of your recollection? A. Well, Mr. Westbrook introduced us to Mr. Schwartzmiller, and he left, and then Mr. Schwartzmiller told us they had come in there, the union.

Q. Can you recall what he said, or what anybody else said? What did Mr. Schwartzmiller say to you? A. Just that we had a union and he was the representative of it, I guess.

Q. Was anything else said? A. Not that I remember.

Q. How long were you in there? A. Probably forty-five minutes. Not too long.

Q. Did any of the girls say anything? A. No, not that I remember.

Q. Did Mr. Schwartzmiller make any statement as to why he was there or how he got there, or anything of that sort? Was there any conversation about that, or by anybody there? A. I don't know.

685

Q. Are you a member of the IAM? A. I am.

Q. When did you become a member? A. It was either the 16th or the 17th.

Q. Now, you say you were in the office the 16th? A. Yes.

Q. Can you recall whether or not you became a member that day, or whether it was the next day? A. I believe it was was the first day.

Q. Do you recall where and under what circumstances you signed the membership card? A. Well, Mr. Schwartz said that somebody had to be first, so we signed it.

Q. Where was this? A. In the office.

Q. You are speaking, now, of the first day you were in there? A. Yes.

Q. What did Mr. Schwartzmiller say? A. He said somebody had to be first, and it might as well be us; We had to join anyway.

Q. So you did what? A. I signed my card.

Q. Where did you get the card? A. I guess he gave it to us.

Q. Did anyone else sign cards that day?

686

A. I think they did.

Q. Now, prior to that day—prior to August 16th—can you state whether or not you had ever seen Mr. Schwartzmiller? A. No, I hadn't.

Q. Prior to August 16th will you state whether or not any representative of the IAM ever approached you? A. No, they didn't.

Q. Will you state whether or not any employee on behalf of the IAM ever spoke to you about the IAM? A. No.

Q. Prior to August 16th will you state whether or not you had ever seen any handbills or posters or circulars from the IAM? A. No, I hadn't.

Q. Now, going back to the time when you were told to go to the office by Mr. McFann was there any conversation between you and Mr. McFann as to why you were going into the office? A. No, he didn't tell us. He didn't tell me.

(686)

Q. Were you alone—were you approached by him alone or in a group, or what? A. No, I was by myself when he came.

Q. And he just told you to go into the office? A. Yes, sir.

Q. What there any question by you as to why? A. No, I didn't ask him.

Q. Will you state whether or not you knew why you were going

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to the office? A. No, I did not.

Q. Now, was there any conversation in the office as to why you girls were there? A. No, he just said he picked us, or somebody picked us.

Q. Who said that? A. Mr. Schwartzmiller.

Q. Will you try to recall just what he said, to the best of your memory? A. About why we were called?

Q. That's right, or who had, or the circumstances. A. Well, I believe he said he took a list of employees or something and went down and picked out a few.

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Q. (By Mr. Farkas) To the best of your recollection, was there any discussion in the office that day with respect to the contract? A. I think he told us they had a contract.

Q. Was there any other discussion, other than he had a contract? A. I don't remember.

Q. Was there any discussion in the office that day as to your—as to what you were to do when when you left the offices? Whether you had any responsibility? A. Well, he told us—Mr. Schwartzmiller told us—that we should go out and tell the rest of the employees that the union had come in, and gave us some cards to hand out.

Q. And what actually did you do when you left the office? A. I went back to work.

Q. You testified just a minute ago that he had indicated you were to tell the girls they had a contract? A. Yes.

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Q. Did you yourself tell anyone they had a contract? A. I told a few of them.

Q. You also testified that he had indicated you should take some cards and get them signed? A. I believe he did.

Q. Did you yourself do that? A. I don't think I had any cards.

Mr. Farkas: No further questions.

Cross Examination

Q. (By Mr. Gallucci) Miss Shaffer,—

Trial Examiner: Will you speak up?

Q. (By Mr. Gallucci) When you were asked whether or not there was any conversation about a contract you said, "I think he told us he had a contract". Did you see any contract that day? A. No, not that I remember. I never seen it.

Q. Was anything in the form of a contract signed by you girls that day when you were called in? A. Not that day.

Q. Isn't it true that at no time during that meeting, that first meeting, did Mr. Schwartzmiller tell you that there was a contract in existence that had been signed by the parties? A. He said they had one. I don't know if it was signed or not.

Q. Did he say it had been signed? A. Not that I remember.

Q. He said he had a contract there, is that right?

690

A. I guess.

Q. And when you went out in the plant did you tell any of the girls that a contract had been signed? A. I

don't think so. I just told them that they said they had one.

Q. Who were "they"? A. Mr. Schwartzmiller.

Q. Mr. Schwartzmiller said he had a contract? A. Whoever had it. I don't know.

Q. Do you remember what he said? Your testimony was "I think he told us he had a contract." That was your testimony. That was your exact answer. Now, what did you tell the girls when you went out? A. I told them that the union had come in.

Q. And you didn't tell anybody the contract had been signed? A. No.

Q. Then it is your testimony that Mr. Schwartzmiller did not, at that first meeting, tell you that a contract had been signed? A. I can't say as he did. I don't remember.

Q. As a matter of fact, as you look back and think back, after having had the chance to recall that meeting, isn't it true that he told you that he had a proposed contract? A. I don't remember.

Q. Could he have said that? A. He probably could have.

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Q. Your memory isn't clear as to that? A. No.

Q. Was there, at that first meeting, any agreement entered into by you girls with Mr. Schwartzmiller or the company, or any discussion entered into about wages, hours and working conditions to be incorporated into an agreement? A. I believe wages came into it.

Q. And what was said about wages? A. I think he told us that we got an increase in wages.

Q. He told you that you had already received one, or that you would get one? A. That we would get it.

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692

Q. (By Mr. Poulton) Miss Shaffer, what shift were you working? A. Second.

Q. That was in August, 1954, is that correct? A. Yes.

Q. And you were called in to Mr. Westbrook's office? A. I believe it was Mr. Westbrook's.

Q. And you stated around five. Was that a.m. or p.m.? A. P.M.

Q. How long did you say that meeting lasted? A. Around forty-five minutes to an hour.

Q. I believe you testified that you discussed wages during that meeting, is that correct? A. I think so.

Q. Was there anything else discussed, that you know of?

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A. Not that I remember.

Q. Could there have been something else that you don't remember? A. I suppose there could have been.

Q. Did Mr. Schwartzmiller, during that first meeting, say why you had to join the union? A. Well, he said everybody would have to join.

Q. Did he tell you why? A. No.

Redirect Examination

Q. (By Mr. Farkas) Miss Shaffer, in response to a question by Mr. Gallucci, as to signing anything on that day, on the 16th, your answer was "Not that day". Did you sign anything on any other day?

Mr. Gallucci: I am going to object to that on the same grounds that he objected to—

Trial Examiner: The question was about a contract, as I recall.

Mr. Gallucci: Signed that day.

Trial Examiner: She testified she signed a card.

Mr. Gallucci: She said nothing was signed that day, no contract was signed.

Trial Examiner: That's the testimony.

Mr. Farkas: That's right, the witness answered "Not that day," and now I want to find out if there was anything any other day.

Trial Examiner: Did you sign a contract at any time?

The Witness: I believe I signed a contract the next day.

Q. (By Mr. Farkas) I hand you what has been received in evidence as General Counsel's Exhibit Number 3. Would you look through that document and tell me whether or not your signature appears on there, on any portion of it?

A. It is on here.

Q. Now, you are pointing, are you not, to the second page of Exhibit "A"? A. Yes, sir.

Q. And you say your signature appears on the second page? A. Yes.

Q. Now, will you state for us just what it was, what document was in the room or the place where you signed, at the time you signed it? Do you understand my question?

A. I am afraid I don't.

Q. The document you have in your hand, as has been established here previously, consists of one portion which is eleven pages, at the end of which there is a signature by Mr. Schwartzmiller.

and Mr. Adams. You see that? A. Yes.

Q. Then there is another portion that is marked Exhibit "B", consisting of two pages, and on the second page there are some signatures. A. Yes.

Q. Then there is a third portion marked Exhibit "A", consisting of two pages, and you just testified your signature appears on the second page of Exhibit "A", is that correct? A. Yes.

(699)

Q. Now, when you signed your name on the page that carries your signature, what portion, if any, or how much of that document that you now have in your hand, was there? A. It was just those last two pages, I think.

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Q. Now, would you mind telling me where you put your signature? What place it took place—your signature on this contract? In other words, what location? Was it in someone's office? A. It was in Mr. Westbrook's office.

698

Q. Was anybody else in Mr. Westbrook's office? A. Yes.

Q. Do you remember who was there? A. Mr. Schwartzmiller, I believe Mr. Adams but I won't say for sure.

Q. Anybody else? A. I don't remember.

Q. Don't you remember all of these people being present?

A. I remember them being there, yes.

Q. They were all present, is that correct? A. Yes.

Q. Now, was the paper on a desk when you signed it, or just where was the location of the paper? A. It was on a desk.

Q. On a desk? A. Yes.

Q. To your knowledge how many pages were in the document that you signed? A. I just remember seeing this page that I signed.

Q. Was that page attached to something else? A. I don't think so. Just like that.

Q. Oh, just the last page is the only thing you signed, is that correct? A. That's all I signed, yes.

Q. And there was nothing attached to that page at all?

699

A. I don't remember of anything being attached to it.

Q. Do you remember whether it had a staple in it? A. No.

Q. Or a clip on it? A. No.

(699)

Q. Could it have been attached to something else? A. I suppose it could.

Q. Have you ever seen the first eleven pages of this document before? Of the exhibit? Have you ever seen the first eleven pages of this exhibit before? A. I have seen them.

Q. Where did you see them? A. You mean that? We have all got a contract. It's in a book.

Q. It is in a book form? A. Yes.

Q. Have you ever seen the first eleven pages as they appear there? A. No.

Trial Examiner: You are pointing to the photostat. Of course she hasn't seen that photostat.

Q. (By Mr. Poulton) I would like to hand you what is the original of General Counsel's Exhibit Number 3. Now, have you ever seen the first eleven pages of that document before?

Mr. Farkas: Mr. Poulton, I wonder if I can make a point here.

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I think she has indicated she had seen it printed. Would you ask her in that form?

Mr. Poulton: That's what I did. The typed form here, have you ever seen those eleven pages before?

The Witness: No.

Q. By Mr. Poulton) Never seen those before? A. No.

Q. Have you ever seen the last two printed pages of that document before in that form? A. Yes, I saw that.

Q. When did you see that? A. I think it was the 17th of August.

Q. 17th of August. Where did you see them, on the table or where? A. They were laying on the desk.

Q. Were they attached together? A. I don't remember if they were or weren't.

Q. Could they have been attached together? A. They probably could have been.

Q. Isn't it possible the first eleven pages of this document could have also been attached to these two pages?
A. I don't remember seeing them.

Q. But they could have been attached? You don't remember, is that right? A. I don't think they were.

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Q. You don't think they were. Calling your attention to the original copy of General Counsel's Exhibit Number 3, have you ever seen a portion of that document marked Exhibit "B"?

Mr. Farkas: In that form?

Q. (By Mr. Poulton) In that form? A. No.

Q. How many copies of this page of the original document, in that form were there when you signed? How many times did you sign your name? A. I don't remember, but I think there were "more than one."

Q. There was more than one. Now, were there any other pages attached to the pages that you signed? A. I don't think there was. They just laid these out.

Q. Just the one page by itself? A. I think it was just the one.

Q. To clarify something in my mind—I may have asked this question—but when was the first time you saw Exhibit "A" in this form? A. August 17th.

Q. August 17th, and where was that? A. In Mr. Westbrook's office.

Q. Was it attached to anything?

Mr. Farkas: Oh, Mr. Poulton.

Mr. Poulton: I believe I have the right to ask this question.

The Witness: I don't remember.

702

Q. (By Mr. Poulton) Was it loose, too?

Trial Examiner: What are you talking about?

(702)

Mr. Poulton: I am talking about page one of Exhibit "A".

Trial Examiner: You didn't say so.

Q. (By Mr. Poulton) Was that loose, too? A. I don't remember.

Trial Examiner: Any other questions of the witness?

Mr. Poulton: That's all I have.

Mr. Gallucci: I have some.

Q. (By Mr. Gallucci) Miss Shaffer, did you testify you did see the first page of Exhibit "A" the day you signed the second page? A. I think I saw that.

Q. Do you remember seeing it? What makes you think you saw this? What recalls to your mind that you saw that before, or are you just guessing? A. No, I think it was.

Q. What on there recalls it to your mind that you saw that? Do you remember reading any of that before. A. Yes, sir, I do.

Q. In this form? A. I remember an increase of wages we were to get.

Q. Do you remember reading part of this first page? Is that correct? A. I don't know as I read it.

703

Q. Well, if you don't know whether you read it, how do you know you remember seeing it? Is there anything about the type, the peculiar kind of type, that recalls it to your mind? A. No.

Q. The form, the paragraphs in which it is laid out on the paper, does that recall it to your mind? A. No.

Q. Then what recalls it to your mind, if you have seen it before? A. I don't know.

Q. Did you ever see it before? A. I believe I have.

Q. Do you know whether you have seen it or not? A. Yes, I saw it.

707

Q. Have you, since that time, had an opportunity to read what is marked as General Counsel's Exhibit number 3?

708

A. I have read it all.

Q. Now, having read it, since that time can you recall—looking back to the day it was signed—whether or not any of the terms which are contained therein had been discussed or explained to you or to the membership prior to your signing? A. It had been discussed, and we knew what was in it.

Q. Had it been read to you? A. Parts of it.

Q. Prior to your signing it? A. No, not before.

Q. It was explained after you signed it, is that your testimony? A. As I recall, yes.

Q. Did you attend any meetings at all prior to signing this agreement, where it was explained to you? A. Before I signed?

Q. Before you girls were called into the office, your testimony is "no"? A. No.

709

Q. (By Mr. Gallucci) Before you were called into the office on the 17th had any parts of this contract been explained to you or discussed by the membership and the union? A. Just the part of wages was all, all Mr. Schwartzmiller told us about; on the 16th.

Q. Had you discussed anything else? A. Unless it was seniority.

Q. Seniority was discussed? A. Yes.

Q. Now, getting back to this meeting of the 17th, the date you signed, think back for just a few minutes and try to reconstruct in your own mind the position of the room, the people who were there, and where you were standing in relation to them. Just take a minute or two off to think back, and recall in your own mind just where everybody was in the room that day while you were there. A. We were all seated around the room.

Q. Good. Now, Mr. Adams was there? A. Yes, I think he was.

Q. He was there.

Mr. Farkas: She said she thought he was.

Mr. Gallucci: What was that remark, please?

Mr. Farkas: I will withdraw it.

Q. (By Mr. Gallucci) Was Mr. Adams there? A. I believe he was.

Q. Was Mr. Schwartzmiller there?

A. Yes, he was there.

Q. Do you now know these people who signed on the second page of Exhibit "A"? A. Yes, I know all of them.

Q. To the best of your recollection were they there, too?

A. Yes, they were there.

Q. Now, in regard to the signing of this, isn't it true, and don't you have a recollection, of whatever day it might be, of Mr. Schwartzmiller, Mr. Adams and these people signing anything that day? A. They could have, but I don't remember.

Q. Your previous testimony was you only remember your signing? A. Yes.

Trial Examiner: Let me ask the witness a question. Do you remember, even though you can't now be sure which

individual was signing, do you remember other people signing the same day you signed?

The Witness: Yes, I remember.

Trial Examiner: It is just that you can't remember specifically, you can't now remember specifically each of those persons actually signing, is that the situation?

The Witness: Yes.

Trial Examiner: But you do remember other people in the room also signing, is that correct?

The Witness: Yes.

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Q. (By Mr. Gallucci) Is it your testimony that while you remember that, among other things, you were signing for a five-cent increase, that you don't actually remember seeing this first page of Exhibit "A"? A. I don't remember.

Q. Could it have been in the room that day? A. It could have been, yes.

Q. You don't remember seeing any part of General Counsel's Exhibit Number 3, pages one to eleven, that day either, do you? A. No, sir.

Q. They also could have been in the room along with this other page? A. They could have been.

Q. Page one, along with this other page one of Exhibit "A"? A. They could have been in the room, yes.

Q. You don't remember seeing any of them there? A. No.

Trial Examiner: What is your best memory as to how long you were in the room on the day you signed this document?

The Witness: Probably an hour and a half or two hours.

Trial Examiner: All right.

Q. (By Mr. Gallucci) Your testimony is that this is your signature on page two of Exhibit "A"? A. Yes.

Q. Was it explained to you, at any time prior to your signing this

second page of Exhibit "A", that upon all the signatures being affixed or signed, there would be a binding agreement between the company and the union? A. Yes.

Q. So that when you signed this you knew that you were entering into a binding relationship with the company and the union? A. Yes, sir, I did.

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Trial Examiner: The witness has testified what she understood. That's important. Let me ask one question. I am not sure whether it is clear what relationship did the meeting with

the employees, where the employees were present, and you testified about certain things being explained by Mr. Schwartzmiller—the time relationship of that meeting, what it was to the time you signed. Was that meeting before you signed or after?

The Witness: It was after we signed.

Trial Examiner: And how much after you signed; do you know whether it was the same day or a day or two—

The Witness: The same day or the next day or two.

Trial Examiner: Take just a minute and tell me whether you think it was the same day or the next day or two; what your best memory is on it.

The Witness: I believe it was the same day.

Trial Examiner: Before or after you signed?

The Witness: After we signed.

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Trial Examiner: Let me ask her a question. You testified

722

about three meetings.

You testified about a meeting in the office on the 16th, when you talked to Mr. Schwartzmiller. You testified about a meeting on the 17th, when you signed this document.

The Witness: Yes.

Trial Examiner: And that was in the office. You testified about the contract being explained at a meeting of the employees. Was that meeting of the employees—that is the one I was asking you about.

The Witness: Well, we signed it that afternoon, and I believe it was that evening we had the meeting that night.

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725

Q. All right, now, when after? First of all, let me ask you this question: What time of day did you sign your name on that document that Mr. Gallucci referred to? About what time of day? A. It must have been around one or two o'clock in the afternoon.

Q. All right, now, what time of day was this explained to you? Was this explained to you the same day or another day? The contents of what Mr. Schwartzmiller went into?

A. I don't remember if it was the same day or a day or two after.

Q. Do you recall what time of day the meeting occurred?

A. Yes. Around twelve o'clock that night, after work.

Q. Can you recall whether or not—well, strike it. Who was present at this meeting, in the evening, that we are talking about? A. Mr. Schwartzmiller.

Q. Who else? A. Most of the night shift.

Mr. Farkas: No further questions.

Trial Examiner: Let me ask this: You gave a lot of testimony

about a meeting at which Mr. Schwartzmiller explained the terms of the contract.

The Witness: Yes.

Trial Examiner: There was a long examination on that by the attorney for the company. Now, was there more than one such meeting at which Mr. Schwartzmiller explained to the employees the terms of the contract, at which you were present, or was there only one?

The Witness: Just the one meeting.

Trial Examiner: Just one meeting?

The Witness: Yes.

Mr. Farkas: I have one further question.

Q. (By Mr. Farkas) Miss Shaffer, would you please tell us, if you can remember, the exact date, if you can—and if not, then your best recollection—of the first time you saw Mr. Schwartzmiller? A. I think it was the 16th of August.

Q. Miss Shaffer, isn't it true that this meeting at which employees of the second shift attended, and at which parts of

the contract were explained, was held prior to the time or the same day prior to the time you people all got together and signed? I mean before, hadn't you already met with the people on the second shift, and then went in and signed this? A. No, we hadn't; I don't think. We signed that the second day after we first heard of the union being in there.

Q. (By Mr. Gallucci) You say you don't remember this meeting of the second-shift people was held before you signed, is that right? A. I don't remember it being held before.

Q. Could it have been held before? A. I don't think so.

Q. Why are you so sure it was held after? A. I don't think we had that meeting that soon after we heard

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the union was coming in.

Q. What did they vote on, if you had already signed it? Now,—excuse me. I am not trying to confuse you, Miss Shaffer, I am trying to get the truth of what actually happened, so far as your recollection will recall that to you. Now, you have said many things during your testimony, some of which are, to say the least, contradictory. I would like to ask you now what you voted on at that second meeting.

Mr. Farkas: I will object unless he makes it clear what he means by "the second meeting".

Q. (By Mr. Gallucci) This second meeting at which the membership was present.

Trial Examiner: Has she testified about two meetings at which the membership was present?

Mr. Gallucci: That second meeting, period. The meeting at which the employees of the second shift were present.

The Witness: It was a mass meeting.

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Q. (By Mr. Gallucci) It was a mass meeting that was held. What was voted on at that mass meeting? A. All we did then was elect officers.

Q. When was the first mass meeting held? A. I don't remember the exact date.

Q. Was there a first mass meeting? A. Why, yes.

Q. Who was at that first mass meeting? A. Just the employees and Mr. Schwartzmiller.

Q. What employees? A. Of both shifts.

(743)

Trial Examiner: Is it your understanding the witness has ever testified about more than one mass meeting?

Mr. Gallucci: That's what I just got now. She is now.

The Witness: We just had one mass meeting.

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745

Trial Examiner: Clear up, if you can, how many mass meetings there were, in view of the reading of the record.

Q. (By Mr. Gallucci) Did you hear the testimony reread there? A. Yes.

Q. What did you mean by "mass meeting" the first time you mentioned it? A. I meant the first time the first and second shift met together.

Q. And how many times did the first and second shifts meet together during that period, ranging from August 16th; a week or two—about a week either way. A. Just one, that I remember.

Q. There was only one meeting? A. That I remember.

Q. What time was this meeting held? A. Seven or eight o'clock that night.

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752

Q. Now, at this first meeting we have been talking about do you remember Mr. Schwartzmiller reading the contract or explaining to you the fact that a contract would contain a no-strike provision, and in turn the company would not lock out employees? A. I don't remember that part of it at that meeting.

Q. When did you first learn about that? A. I don't remember that.

Q. Were there any objections voiced from the floor to any of the provisions that Mr. Schwartzmiller read? A. I don't believe there was.

Q. This meeting you testified was held in the office, the day you personally signed page two of Exhibit "A", was that held before or after this meeting which we have just been talking about? A. I think it was after.

Q. It was after? .

753

A. No, that was before that meeting.

Q. You signed this before that meeting? A. I think so.

Q. Do you recall the date of that first meeting at which employees of the second shift only attended? A. Not the exact date.

Q. Approximately when? A. I suppose around the 17th or 18th.

Q. Is it your testimony, then, you were all called into the office? You signed this, and then you held that meeting, that midnight meeting of the second shift? A. I am not sure before or after, but I think it was after.

754

Q. (By Mr. Gallucci) Going back to the midnight meeting of the second shift only, was there a vote of any kind taken at that meeting? A. We just elected two committee men, is all I remember voting on.

Q. Who were those committeemen? A. That were elected? Clayton Munday and Iola Joice.

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Redirect Examination

Q. (By Mr. Farkas) Miss Shaffer, you just answered a question for Mr. Gallucci, speaking of yourself, and I believe testified that parts of that contract had been explained to you before you signed the document that you did on the 17th, is that correct? A. Yes.

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Q. Can you recall where and when and by whom you received these explanations? A. It was from Mr. Schwartzmiller one of those days in the office.

Q. All right, now, when you say "one of those days in the office," what dates are you speaking about, to the best of your recollection? A. Either the 16th or 17th of August.

Q. Now, before the 16th of August or the 17th of August, whichever may it be, will you state whether or not there were any explanations with respect to portions of the contract, and if so, by whom? A. No, there wasn't.

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Dorothy Sarles

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) What is your address, Miss Sarles?

A. 9 Lake Street.

Q. Are you now employed? A. No, sir.

Q. When was the last time you were employed? A. The fore part of May. I would judge around the 9th of May.

Q. Where were you working at the time? A. Bryan Manufacturing Company.

Q. When did you first begin working there? A. January 11, 1954.

Q. During your period of employment were you a member of the union?

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A. I was.

Q. When did you become a member of the union? A. The last part of August or the first part of September.

Q. 1954? A. Right.

Q. Will you please tell us the name of the organization of which you were a member? A. The IAM, International Association of Machinists, AF of L.

Q. When did you, as an employee of Bryan, first learn that there was a labor organization? Namely, the IAM; in the plant? A. I would judge the 17th of September—I mean of August.

Q. Is there any particular reason for your recalling that approximate date? A. Yes. Because of the very fact that on the last break of that day Mr. Cederquist came out into the shop and told us that we had a union and had had it since August 10th.

Q. Who is Mr. Cederquist? A. I am sorry. Mr. Cederquist, I am sorry, is the man we had to deal with most of the time. It was Mr. Schwartzmiller.

Q. It was Mr. Schwartzmiller? A. Yes.

Q. Are you now correcting your testimony? A. Yes, sir.

Q. The individual you spoke of, then, was not Mr. Cederquist? A. No, sir, it was Mr. Schwartzmiller.

765

Q. Mr. Schwartzmiller. Now, what was this occasion you mentioned involving Mr. Schwartzmiller? A. He came out and told us we had a union.

Q. Where did he come? A. Into "the lunch part of the factory."

Q. Incidentally, what shift did you work on? A. I worked on first.

Q. About what time was this break? A. Two-thirty, I believe.

Q. You say Mr. Schwartzmiller was there? A. Yes.

Q. Who else was there? A. Just the girls in the factory.

Q. Well, is there one place that the girls gather for their

(765)

break? A. Usually where they eat dinner, where the benches and tables are.

766

Q. Now, Mr. Schwartzmiller was at this break? A. Yes.

Q. Do you recall what the discussion was about? A. He said that we "had received a nickel increase" to be taking effect retroactive of August 10th, and he went on to say something about seniority, and there was something said about holidays, but I don't recall the exact conversation.

Q. What—how did the conversation start? Who started it? Did the employees start it or did Mr. Schwartzmiller start it? A. Mr. Schwartzmiller started it and "some of the employees asked questions."

Q. What did Mr. Schwartzmiller say in starting the conversation? A. He said, "You girls now have a union and have had it as of August 10th." We asked him why, and I don't remember his answer. I mean, I can't recall.

Q. Did you have any conversation with him personally? A. Not personally, no.

Q. Now, you say your memory of this was that this occurred on the 17th? A. Yes, if that is on a Tuesday.

Q. It was on a Tuesday, then, you say? A. Yes.

Q. Incidentally, when do you get paid? What day of the week? A. Friday.

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Q. Have you ever attended any meetings of the IAM? A. Yes.

Q. Can you recall when was the first time you attended such a meeting? A. I cannot positively state, but I believe that it was Tuesday night after work.

Q. Now, you have mentioned Tuesday. A. It would be August 17th, or approximately that.

Q. Were these different Tuesdays or the same Tuesday?

A. The same Tuesday.

Q. And when did you attend this meeting? What time?

A. I—

Q. What time of day? A. I believe it was right after work.

Q. At the end of your shift? A. Yes.

Q. Do you recall where it was? A. The American Legion Hall.

Q. Do you recall who was there? A. Most of the girls at work.

Q. When you say "most of the girls" who do you have reference to? A. To the day shift.

Q. Do you remember who chaired the meeting? A. No, I don't.

Q. Do you remember the subject matter that was discussed at the

768

meeting? A. There was part of the contract read.

Q. By whom? A. Mr. Schwartzmiller.

Q. Do you remember any conversation or any statements Mr. Schwartzmiller made in that connection with the contract? A. He said that he would take the highlights of the contract and read it to us, because there was not enough copies for everybody, and that he didn't have time to go into the whole thing and discuss the whole thing thoroughly.

Q. Now, was there any conversation between anybody from the floor and Mr. Schwartzmiller? A. There may have been. I don't remember.

Q. Now, I believe you just testified that you learned first of the IAM on or about the 17th, a Tuesday? A. Yes.

Q. Before that date—strike that. When was the first time that you saw Mr. Schwartzmiller? A. I again believe that was on the 17th, when he came out into the factory.

Q. Prior or before that date will you state whether or

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not you had ever been approached by any person—any representative, that is—of the IAM? A. I had not.

Q. Will you state whether or not you had ever been approached

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by any employee at Bryan on behalf of the IAM? A. I had not.

Q. Will you state whether or not before that date—and I speak of August 17th or thereabouts—you had ever signed any authorization card on behalf of the IAM? A. I had not.

Q. Will you state whether or not prior to that date or before that date you had ever seen any handbills or circulars or posters or literature of any kind from the IAM? A. I had not.

Q. Will you state, please, why you became a member of the IAM, if you have any reason? A. We were told we had to either join the union or lose our jobs.

Q. You say "we were told." Who told you that and when? A. It was told in a union meeting.

Q. What union meeting? A. By the—I will not say whether it was the first union meeting, whether we were individuals, or the big union meeting where both shifts were together.

Q. You attended a meeting where both shifts were together? A. Yes.

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Cross Examination

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Q. Now, your testimony about Mr. Schwartzmiller at that time telling you that you had a contract and had had one since August 10, 1954, did he tell you the contract had been signed on August 10, 1954? A. I don't know as he

said the exact date it was signed, no. He said it was as of then.

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Q. He said it was as of that time? A. Yes.

Q. Could he have been referring to the benefits of the contract extending retroactively to that date? A. It may have been, but that was not the impression he gave me.

Q. Did he give you any impression other than what was in the contract, that it would extend back to that date?

A. He gave, to my impression, or my interpretation of what he said, is that the contract itself was as of August 10th.

Mr. Gallucci: I have no further questions.

Q. (By Mr. Poulton). When was the first meeting you attended that was held by the IAM? A. It would be the evening of the 17th, I believe.

Q. About what time in the evening was the meeting held? A. I imagine about five o'clock, before they all got situated around.

Q. Who chaired that meeting? A. That, sir, I do not know.

Q. Was it Mr. Schwartzmiller, do you know? A. It may have been, sir.

Q. And I believe you stated Mr. Schwartzmiller discussed parts of the contract, is that correct? A. Yes.

Q. Did anything else take place at that meeting?

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A. We started to elect our committeemen, and the officers, the top-ranking officers, so that they could go ahead and hold their meetings in an orderly fashion.

Q. Who did they nominate for the top officers at that meeting? A. Laura Puckett was one of them that was elected.

Q. What was she nominated for at that meeting, do you remember? A. President.

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Q. Any other officers nominated at that meeting? A. I do not recall.

Q. When did you say payday was on, in August, 1954? What day of the week did you say was payday? A. Friday.

Q. Could it have been Wednesday at that time? A. Gosh, I don't remember, sir. I am honest with you. My husband's payday is Friday, so that is probably confusing me.

Q. Now, was there anything else that you can remember that was discussed at that first meeting, that you place as August 17th? Anything else you can remember of? Anything else happen at that meeting? A. I can remember him reading sketches of the contract, but to tell you specifically what sketches he read, I cannot.

Q. I am not asking you that. Was there anything else besides reading sketches and the nomination of officers? Was there anything else? A. Nothing of importance.

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Q. Were any votes taken at that meeting? A. No, sir. If you are referring to union—to the acceptance or denial of the union—there was not.

Q. I am not referring to that. Were there any votes at all taken at that meeting? A. For committee members, yes.

Q. Do you remember what that vote was? First let me ask if you remember who was nominated. A. I remember Paul Parker, and Imojene Sperbeck.

Q. Was anybody else nominated? A. There were others nominated, but I cannot recall.

Q. Do you remember anything about the tally of ballots what it was? A. No, sir, I can't.

Q. Do you remember how the vote was taken? Was it a voice vote, secret ballot or how was it taken? Hand raising? A. I cannot recall for sure because we have used all three of them.

Q. Did you object to the contract with the union? A. Not at that particular meeting, no.

Q. Wasn't there a vote taken whether you wanted to accept the contract at that meeting? A. No, sir.

Q. You are positive? A. I am positive.

775

Q. Was there ever a vote taken on that subject? A. Never when I have attended a meeting.

Q. And have you attended all meetings? A. I am pretty sure of it, sir.

Q. So your testimony is the only vote taken was as to committeemen? A. Committeemen, and I believe president.

Q. Do you remember anybody objecting to the contract at that meeting? Getting up on the floor and objecting to the contract at that meeting? A. I cannot recall of any.

Q. Did you work on August 16, 1954? A. Yes, sir.

Q. Did you hear anything about the IAM on that day, August 16th? A. No, sir.

Q. Do you know they were called in the office at that date? A. Yes.

Q. Did you know what for? A. No.

Q. Referring again to the meeting that you said was on August 17th, were any objections to the union voiced at that meeting? A. I cannot recall too thoroughly what was discussed and what was not discussed.

Q. Why are you so positive there wasn't a vote taken on the contract?

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A. Because of the very fact after I had thought it over I wondered why.

Q. Does that recall that there wasn't a vote taken? A. Yes, sir.

(778)

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Frances Peters

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you live, Mrs. Peters?

A. 205 Lynn Street, Reading.

Q. Are you employed now?

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A. I am.

Q. Where are you working? A. Bryan Manufacturing Company.

Q. How long have you worked there? A. It will be two years January 28th, 1954.

Q. January 28th or thereabouts of 1954? A. Yes.

Q. Has your employment for the most part been regular and steady? A. It has.

Q. Are you a member of the union? A. I am.

Q. The IAM? A. Yes.

Q. Can you recall when you first became a member of the union? A. It was the 17th of August, I guess.

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Q. Now, can you recall the first time that you knew there was a union in the plant? A. The day they brought it in.

Q. When was that? When did you first know there was a union in the plant? To the best of your recollection?

A. Well, it must have been around the 17th of August.

Q. Can you recall how you learned that? A. Well, the girls in the shop, I just heard there was one. I was told.

Q. Now, before that date had you ever been approached by any representative of the IAM? A. No, I wasn't.

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Q. Had you ever been approached by any employee on behalf of the IAM? A. No, sir.

Q. Will you state whether you had ever seen any posters or circulars or hand bills or literature of any kind from the IAM before that date? A. There was nothing whatsoever.

Q. Do you know Mr. Schwartzmiller? A. No, I don't.

Q. Have you ever seen Mr. Schwartzmiller?

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A. Well, I hadn't before then, no.

Q. When was the first time that you saw him? A. The date he called us. Well, it must have been during the break. It was during that break on the 17th.

Q. Were you employed on the day shift then? A. I was.

Q. And were you present at that break? A. Yes, I was.

Q. Can you recall what the conversation was? A. I don't know. It was just that we had a union.

Q. Who said that? A. Well, I don't know who said it. You just came to work and there was a union.

Q. No, I am speaking of the break period. Was there any conversation during the break? A. I don't know.

Q. I beg your pardon? A. I don't know.

Q. Do you know the general subject discussed during the break? A. Well, just the union, the contract.

Q. Did you attend any meetings of the IAM? A. Not very many, no.

Q. Do you recall whether you attended any? A. I attended probably two or three of the whole bunch.

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Q. Do you recall whether you attended that meeting at the end of the day shift? A. I did.

Q. Do you recall what occurred there? A. What occurred? Why, Mr. Schwartzmiller read several parts of the contract; and that's all I can remember. He didn't read

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it all, of course. He didn't have time. The girls didn't really—he just read, you know, some parts.

Q. Was anything said with respect to the union and its presence in the plant in that meeting? Was there any discussion about that? A. Pardon?

Q. Was there any discussion? Did Mr. Schwartzmiller say anything about the IAM and its function in the plant? What it was doing there, or anything of that sort? A. Well, he "just said we had it."

Q. Do you recall anything further? A. Well, I believe they elected committeemen.

Q. Do you recall who was elected? A. I know there was Paul Parker. He was one on days. And I don't know whether Clayton Munday was on nights—I can't remember only just a couple of them.

Q. Mrs. Peters, do you recall whether at any meeting you ever attended there was a vote taken on the contract? A. No, there wasn't any vote taken on the contract.

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Q. I am speaking of any meeting you attended. A. No. Mr. Farkas: I have no further questions.

Cross Examination

785

Q. (By Mr. Poulton) Do you remember everything that took place at the meeting on the day shift of August 17th, I believe? A. Pardon?

Q. Do you remember everything that took place at the meeting that you attended? A. No, I don't remember everything. I don't think anybody does.

Q. Do you remember whether there was a vote taken to approve the contract? A. I don't believe there was.

Q. You don't believe there was? A. No.

Q. Do you know whether there was or wasn't?

A. I am almost certain there wasn't.

Q. What makes you so certain? A. Well, that is my opinion.

Q. Oh, it is just your opinion. Could there have been a vote taken to approve—let me ask you this: Let me ask you this: How long did you stay at the meeting? A. I stayed during all of the meeting.

Q. How long did it last? A. Oh, it must have been an hour or so.

Q. What time did it start? A. I think that it started about three, three o'clock, I would say.

Q. And it lasted until what time? A. Probably about four, four-thirty.

Q. Were you there the entire time? A. Yes, I was.

Q. What time did you leave the hall? A. About four-thirty, whatever time it was over.

Q. Do you remember who chaired the meeting? A. No.

Q. Pardon? A. No, I don't. I think Schwartzmiller was the main speaker.

Q. But you don't know who chaired the meeting? A. No.

Q. Do you remember any discussion that took place at the meeting?

A. No, I don't, no.

Q. Do you remember any of the discussion that took place at the meeting? A. There were different things. About wages and seniority.

Q. Anything else? A. They just—they discussed parts of the contract.

Q. Anything else that you can remember? A. I can't remember.

Q. Now, you say they voted for committeemen, is that right? A. I believe so.

Q. How was the vote taken? A. It was taken by ballots.

Q. By secret ballot? A. Yes.

Q. Do you remember what the tally was, the ballots?

A. No, I don't.

Q. Do you remember who won the nominations for election? A. Laura. I think she—

Q. Anybody else? How about committeemen? Who do you remember who was elected committeeman? A. Paul Parker. I know Paul Parker.

Q. Was there anybody else elected that you know of? A. I think just the president.

Q. And the committeemen, too? A. I don't believe the rest of the officers were.

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Q. Were there any committeemen elected that night? A. Paul Parker, I believe.

Q. Paul Parker. Now, do you remember what the tally was as to Paul Parker? How many votes he got? A. No, I don't.

Q. Were there any other votes taken, that you recall? A. No.

Q. I mean on other committeemen. Were there any other committeemen? A. There must have been, but I can't remember.

Q. Is it possible that there could have been a vote taken on approval of the contract, and you have forgotten it? A. I would almost swear there wasn't.

Q. But are you positive there wasn't? A. I am positive.

789

Joyce Shaffer

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Miss Shaffer, where do you live?

A. R. 2, Osseo.

Q. Are you working at the present time? A. Yes.

Q. Where are you working? A. Bryan Manufacturing Company.

Q. When did you start working there? A. June 30, 1954.

Q. Are you a member of the union? A. Yes.

Q. Do you recall when you became a member of the union? A. No, I don't recall.

Q. Can you recall the year that you became a member of the union? A. Well, it was a month or two after it came in.

Q. Was that 1954? A. Yes.

790

Q. Now, can you tell me when was the first time that you knew that a union had come into the plant? A. It was shortly after the girls came out of the office.

Q. By "shortly after" are you speaking of that day or later? A. That day.

Q. Sometime that day? A. Or that night.

Q. And how did you learn that? A. Donna Munger come and told me.

Q. Do you recall what she said? A. No.

Q. Before that date—about when was that, would you say? A. I don't know.

Q. Well, can you recall the month? A. It was in July or August. I don't know.

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(790)

Q. You don't recall? A. No.

Q. Before the date on which you had this conversation about a month later will you state whether or not you were ever approached by any representative of the IAM?

A. No.

Q. Will you state whether or not you were ever approached by any employee on behalf of the IAM? A. No.

Q. Will you state whether or not you have ever seen any posters

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or literature or circulars of the IAM before this date?

A. No.

Q. Did you have any reason for joining or becoming a member of the Union? A. Just that I had to or else lose my job.

Q. How did you know that? A. That's what they said. When the probationary period was up I was to join.

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Mr. Farkas: Counsel for the respondent company and respondent unions and I discussed, during the recess, the possibility of entering into a stipulation, the object being to expedite the hearing. The testimony of a number of witnesses which I propose to call was, in essence, cumulative, and it is on this basis that the counsel for the respondent union and company have indicated their willingness to join me in a stipulation.

Now, the last witness who testified, Miss Joyce Shaffer, made reference to the fact that she first learned of the IAM's existence in the plant on the day the girls were called in the office. Specifically, when asked about the date of that, she was not quite certain, and said July or August.

I think that the record shows, and it is well established here, and counsel for the respondent union and the company

will acquiesce in this statement, that the day the girls were called in the office was in the month of August. I won't go beyond that. I will let the record stand, but it was not in the month of July. It was the month of August. I won't mention the specific date. I will let the record stand as it is.

Now, to that extent, if counsel for the respondent company and the union will agree to that correction in the testimony of Miss Shaffer, I propose the following stipulation:

That if the following employees were called, in response to subpoenas served upon them, their testimony would be substan-

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tially the same as that given by Joyce Shaffer.

The employees being—and I don't know whether this happens to be in the order number of the subpoenas or not—James Hayes, LaJeanne Hinkle, Pat Carpenter, Dorothy Sloeum, Ruth Young, Donna Newbauer, Esther May, Caroline Pfeifle, Evelyn Bradshaw, Barbara Rodgers, Violet Kelley, Paul Parker, Darlene Sharp; and the other two individuals have already testified—Frances Peters and Joyce Shaffer.

Mr. Poulton: May I ask how many the total is?

Mr. Gallucci: There were twelve.

Mr. Farkas: I believe there were thirteen.

Mr. Gallucci: I think I missed the names.

Trial Examiner: You can check.

Mr. Gallucci: Were you also counting Joyce Shaffer?

Mr. Farkas: Let me check that and see if I am in error. I have thirteen names, not counting Joyce Shaffer, Dorothy Scharles or Frances Peters—excusing those three, I have thirteen.

Trial Examiner: I issued sixteen subpoenas, and three testified, and there should be thirteen left. I wanted to be sure the record showed what the facts were.

Mr. Farkas: I believe I had completed my statement. So that the matter is not left hanging, I will repeat the query: I will inquire whether or not counsel for the respondent company and the union respectively will join me in the stipulation

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that these thirteen people whose names have just been read, if called would testify substantially the same—in substantially the same manner as Joyce Shaffer,—and for that matter—no, Joyce Shaffer. The other two witnesses entered into other matters. With the correction as to the date of that day the girls were called in the office.

Mr. Gallucci: In the interest of expediting this as much as possible, I will concur without any reservations in that stipulation.

Mr. Poulton: I will join the general counsel in behalf of the respondent Local and the International in that stipulation.

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Iola Joice

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you live, Mrs. Joice?

A. Eaton, Ohio, Route 2.

Q. You are appearing here in response to a subpoena, are you not? A. Yes, I am.

Q. Are you employed at the present time?

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A. Yes, sir.

Q. Where are you working? A. Bryan Manufacturing Company, Reading, Michigan.

Q. When did you first begin your employment there? A. July 1, 1954.

Q. Has your employment been regular for the most part or have you had any absences? A. It has been regular.

Q. Are you at the present time a member of any labor organization? A. Yes, I am.

Q. Would you name the labor organization? A. IAM, AF of L.

Q. Can you recall when you first became a member of the IAM? A. It was in September of 1954.

Q. Will you tell us the occasion or how you became a member? What did you do? A. When I signed my card it was at the second meeting where they nominated officers, elected officers.

Q. Are you speaking now of the meeting of employees?

A. Yes.

Q. And do you recall how you got your membership card?

A. They was passed out. I don't remember who passed them out, but they was passed out.

Q. At the meeting?

803

A. At the meeting, yes.

Q. Why did you become a member of the IAM, if you have a reason. A. I thought I had to become a member in forty-five days or I wouldn't be working there any longer.

Q. You just testified you are a member of the IAM. Will you tell us when you first knew that there was a union in the plant at Bryan? A. August 16, 1954.

Q. And how did you learn that fact? A. Jean Edinger.

(803)

when she got back from the office—Mr. McFann came out earlier and got her, and when she came back naturally I was interested in what she was called into the office for, and I asked her, and she said we had a union.

Q. Did you make any reply to that or was there any conversation after she said that? A. I asked her was it in the AF of L or CIO.

Q. And what, if anything, did Miss Edinger say? A. She said she knowed it wasn't the CIO, but she thought it had something to do with the AF of L.

Q. Incidentally, do you know where Jean Edinger worked in the plant? A. Right across the conveyor belt from me.

Q. About how far away was that? A. From me to the reporter.

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Q. The distance between you and the reporter? A. Yes. I don't think it was quite that far.

Q. Five or six feet, something like that. Would that be a fair estimate? A. I don't think it was quite as far as it is from me to him.

Q. Across the aisle, you say? A. No, the conveyor belt.

Q. Oh, across the conveyor belt. Now, before this day—August the 16th—I believe you said, when you learned from Jean Edinger there was a union in the plant—will you state whether you had ever been approached by anybody from the IAM? A. No, I hadn't.

Q. Will you state whether any employee, fellow employee on behalf of the IAM, ever approached you or talked to you about the IAM? A. No, they hadn't.

Q. Will you state whether or not you had ever seen any posters or literature or circulars or written material of any kind from the IAM? A. No, I hadn't.

Q. As a member of the—strike that. Did you ever attend any meetings of employees involving the IAM or the Union? A. Before the 16th of August?

Q. At any time. Well, let's take that question first. Before August 16th?

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A. No, I hadn't.

Q. How about August 16th? A. Yes.

Q. Can you recall when that was? A. August 17th.

Q. And what time on August 17th? A. Eleven o'clock. It was around eleven.

Q. Can you tell us who was present at that meeting?

A. The second-shift employees and Mr. Schwartzmiller.

Q. When you say "the second shift" is it my understanding you say that only the second shift was there?

A. That's right.

Q. Who else was there besides the second shift? A. Mr. Schwartzmiller.

Q. Was there anyone else present? A. No.

Q. Now, can you recall who chaired that meeting? A. Mr. Schwartzmiller.

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Q. (By Mr. Farkas) What else, if anything, occurred there that night? A. Nominating committee members.

Q. Who was nominated? A. Phyllis Gaberdale, Clayton Munday, Maryalice Mead, myself.

Q. These are people you say were nominated. Now, can you recall who was elected? A. Clayton Munday and myself.

Q. Now, what else occurred? What other discussion was there at this meeting, to the best of your recollection? Strike that. Go ahead. A. I don't remember any other discussion, outside of the contract and nomination of officers. I mean committee members.

(807)

Q. Have you then, to the best of your recollection, told us what you believe occurred there at the first meeting, the meeting

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on the night of August 17th? A. Yes, I have.

Q. Can you recall, Mrs. Joice, whether there was any discussion between Mr. Schwartzmiller and anyone from the floor on any subject matter? A. Not any one individual. I mean I couldn't name any individual, but I know some one wanted him to read all of the contract, and that was followed up by someone else saying they would like to hear all of it, too.

Q. Can you recall whether there was any discussion at that meeting with respect to the circumstances surrounding the existence of the contract? A. I know when we first went up there there was some confusion of some kind about how the contract—how they had came in—but as far as remembering any part of that, I can't. The only thing I remember definite about that was Mr. Schwartzmiller. I heard him say he heard there was going to be somebody sent up there to try to break up the meeting, and he wasn't going to let that happen. Who he was talking to at the time, I didn't know.

Q. Can you recall whether there was any conversation or discussion that night with respect to joining or membership in the union? A. Yes.

Q. What was that?

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A. It was either forty-five or sixty days, that—I believe it was forty-five days—it would cost us less to join at that time than if we joined after the forty-five days.

Q. From whom did this statement come, or how did it originate? A. Mr. Schwartzmiller was explaining initial

tion fees, and he said by that time we would have a local number or something, and we would set our own initiation fees, and without a doubt they would be higher than what they was then.

Q. Now, Mrs. Joice, you say you were elected a committee woman that night? A. Yes.

Q. Will you state whether or not you received any sort of explanation as to your duties in connection with that office, and if so, by whom? A. No. Mr. Schwartzmiller told me to be at the factory in the morning at ten o'clock, and that's all the information I received from him.

Q. You mean the following morning? A. That's right.

Q. Were you at the plant the following morning at ten o'clock? A. Yes, I was.

Q. And what did you do? A. I went in the front door and asked the receptionist where I was supposed to go. She didn't know nothing about it. I was sure they told me that, and I said I would go downtown and come

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back, maybe, about a quarter after, have a cup of coffee, and when I came back she told me to go in Mr. Westbrook's office.

Q. Who is "she"? The receptionist? A. Yes.

Q. Incidentally, when did you go to work that day, or when were you scheduled to go to work? A. We weren't scheduled to go to work until Monday morning.

Q. What day of the week was this? A. That I went to the

Q. Office? A. It was on Wednesday.

Q. Can you explain that? Were you not working a full week at that time? A. No, we weren't.

Q. Is that the explanation? A. The second shift worked Monday and Tuesday, and Monday we were to report on days.

(810)

Q. All right, you were told now, you say, by the receptionist, to go to Mr. Westbrook's office? A. That's right.

Q. Did you do that? A. Yes, I did.

Q. Who was at or in Mr. Westbrook's office? A. At the time I went in?

Q. If anybody.

811

A. Florence Napier and Imojene Sperback. When I went in I don't remember any others outside of those two.

Q. Those are the only two that you remember? A. When I went in.

Q. Was there anyone else in the office? A. You mean did they come—

Q. My question is not was there anybody else there before you got there, but at any time, who was present while you were in the office? A. Mr. Westbrook, Mr. McFann, Imojene Sperbeck, Clayton Munday, Paul Parker, and Mr. Schwartzmiller.

Q. All right, now, would you tell us what occurred? Incidentally, how long were you in there? A. Until around four in the afternoon.

Q. And you say you went in there what time? A. Oh, it was between ten-fifteen and ten-thirty.

Q. Was there any break for lunch? A. Yes, there was.

Q. Approximately an hour or so?

Mr. Gallucci: I am going to object.

Trial Examiner: Sustained. Ask the witness.

Q. (By Mr. Farkas) Did you go to lunch? A. Yes.

Q. How long were you out for lunch? A. About an hour, maybe an hour and a half.

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Q. All right. Now, what occurred in the office while you were there? A. We discussed seniority. I can't remember

if Mr. Probst was there or not, but if it was the time he was there we discussed about when people were laid off, how they would be called back. I don't mean by seniority, but I mean what means of calling back they would use, and they were talking about registered letters or telephone, and how long they would have to report in from the day they received it, and how long they would have until they lost their seniority, to come back to work.

Q. Now, Mrs. Joice, this was the first meeting you attended as a committee woman? A. Well, it was the first three or four I attended, but I—

Q. No, I am sorry. You don't understand. I am not speaking of the presence of Mr. Probst. I am speaking of the morning you were called in. Was that the first meeting you attended as a committee woman? A. Yes.

Q. From your statement am I correct you attended other meetings? As a committee woman? A. Yes.

Q. Then your testimony with respect to Mr. Probst it was at one of these meetings, but you don't remember just which? A. That is right.

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Q. Mrs. Joice, I am going to hand you what has been marked and—

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received in evidence as General Counsel's Exhibit Number 3, which has been identified as a contract between the company and the union under date of August 10, 1954, and which consists of three portions, the first being eleven pages in length, a second portion being marked Exhibit "B", consisting of two pages, and a third portion being marked Exhibit "A", and consisting of two portions.

Would you examine that? Particularly the portions of the contract which carry signatures?

(814)

Have you had an opportunity to examine that? A. Yes, I have.

Q. Do any of those documents which carry signatures—any of those pages—do they carry your signature? A. Yes, they do.

Q. Which one is that? A. The second—

Trial Examiner: How many pages from the back of the document? Can you tell us that way?

The Witness: The third page from the back.

Trial Examiner: The third page from the back.

Q. (By Mr. Farkas) And what is the date over your signature, if any? What date is on that sheet that bears your signature? A. The second of September? Mine isn't too clear.

Q. Now, can you recall the circumstances involving your signature on that sheet?

815

A. You mean the day I signed it? I remember it was at the end of a committee meeting and Management.

Q. You signed it at a committee meeting, you say? A. Yes.

Q. Do you recall where that was held? A. Mr. Westbrook's office.

Q. Do you recall who was present? A. Yes, I do.

Q. Who was present? A. Mr. Schwartzmiller, Florence Napier, Imojene Sperbeck; Paul Parker, Clayton Munday, Mr. McFann.

Q. Anyone else? A. That's all: Myself.

Q. Can you recall whether—strike that. Can you recall who, in addition to yourself, you saw signing that? A. I know I signed it in that office, but I don't know if they did or not.

Q. Now, where did you sign it in the office? A. On the desk.

Q. Will you explain to us just where the paper was that you signed? A. The left-hand corner of the desk.

Q. What was on that desk?

Mr. Gallucci: Mr. Trial Examiner, I haven't objected in the past to Mr. Farkas's continually slightly leading questions.

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"What happened next," or "What was there." I don't think those—

Trial Examiner: The objection is overruled. To those kind of questions I think the objection should be overruled. Proceed.

Q. (By Mr. Farkas) What was on the desk? A. Everything preceding this page. It was folded back like this, and I signed it, but I can't remember—the telephone was there—

Q. All right. Now, what was the reason for your signing that? If any? Let me ask you another question. Perhaps phrase that a little different. Was there any conversation with anybody or any discussion with respect to signing it before you signed? A. Not that I recall.

Q. My next question then is why did you sign? What was your reason for your signing? A. The committee and Management had agreed as near as possible on things they had discussed, and Management and the committee, neither one—well, they just had agreed on it.

Q. Can you recall when this agreement occurred? A. They didn't agree on everything at once. I mean like they agreed on call-backs and seniority at different times, and it was to my belief everything had been covered, and then we signed it.

Q. When you speak of an agreement, are you speaking of previous committee meetings? A. Yes, I am.

Q. Can you recall whether there was any understanding of any kind with respect to the day on which you signed that agreement, as to the signing? A. No, I don't.

Q. Well, I am just trying to find out, Mrs. Joice, how it was that you went into the room and signed. Do you know what prompted it? What was the reason for your being there and signing it? If you can recall.

Mr. Gallucci: Mr. Trial Examiner, that question was asked in exactly the same way before, and answered at least twice.

Trial Examiner: I think the witness has given an explanation of why she signed. Do you recall how this particular meeting happened to be called the particular day that you did sign this, or was it just one of several meetings, as far as you can remember?

The Witness: As far as I can remember, it was just one of several meetings.

Q. (By Mr. Farkas) Going back to the meeting on the night of August 17th, when you were elected a committee woman, Mrs. Joice, can you recall whether there was any discussion with respect to the status of the people who had been acting as temporary committee men? Was there any discussion at all about that matter? A. You mean at the union meeting?

Q. When you were elected a committee woman. A. Well, I knew that I was supposed to go in there the next

day, and Jean Edinger and those girls wasn't to go in there no more.

Q. Well, how did you know that? A. Because we were told they were on a temporary committee.

Q. And that night you and who else were elected? A. Clayton Munday.

(867)

Q. What was the exact title of your position, if you can recall? Was it just committee woman, or some other—

A. Committee woman, is all I know.

Q. Can you recall the first occasion or day when you saw Mr. Schwartzmiller for the first time? A. It was August 17th.

Q. Where was that? A. At the factory.

Q. You mean in the plant? A. That's right.

863

E. J. McFann

a witness called by and on behalf of the Respondent Company, having been previously duly sworn, was examined and testified as follows:

Direct Examination

866

Q. Mr. McFann, approximately how many of your employees subsequently to the execution of the contract of August, 1954, authorized the company in writing to check off their dues? A. Well, all the employees authorized the checkoff sheet except possibly a few on probation.

Q. Except who? A. A few employees who may have been on probation. I don't know actually if there were any employees or not. If there were, those employees would have, but outside of that, everyone else to

867

my knowledge—

Q. (By Mr. Gallucci) Mr. McFann, if you know, will you please state whether or not your company checks off dues for employees who so authorize it? A. Yes, we do.

(867)

Q. Has any employee who has been employed forty-five days or more ever refused to have their dues checked off?
A. No.

Q. How many employees do you presently have at Reading and Hillsdale plants? A. Around four hundred eighty employees.

Q. Have all those employees authorized the company to check off their dues? A. All but probationary employees, which there are some of at the present time, but I don't know how many.

Q. Could you estimate the approximate number of probationary

868

employees at present? A. Well, we have done a lot of hiring lately, in the last two months, and it would have to be a guess. I wouldn't even know whether I would be close. I would say possibly thirty to forty employees.

873

Trial Examiner: The hearing will be in order. The respondent union may proceed with its case.

Mr. Poulton: The respondent union, sir, will call one witness. We do not attempt—I do not think it is necessary to attempt to refute any of the statements in the record by the witnesses of the General Counsel, and we will call this witness for one purpose only, and the purpose will appear during the examination.

I would like to call Miss Maryalice Mead.

Maryalice Mead

a witness called by and on behalf of the Respondent Union, being previously sworn, was examined and testified as follows:

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Now, at the time you signed this statement, in which you declared that the above charge and statements therein were true to the best of your knowledge and belief, did you believe that the company had discharged those people for activities on behalf of the UAW-CIO? A. Yes, with the union's help.

Q. So that when I asked you sometime ago if the company had ever done anything to discourage union activity, and you said no, they hadn't, you were lying to me?

1150

Farn Salomon

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Farkas) Where do you live, Mr. Salomon?
A. 318 Northwestern, Hillsdale, Michigan.

Q. Are you employed? A. Yes.

Q. Where? A. Allied Products, Plant 3.

Q. Are you a member of Local 701? A. I am.

Q. Have you ever held any office? A. I have.

Q. When? A. As president—

1151

Q. What office was that? A. I was recording secretary for a number of years. I just can't tell you the exact year I went in office, but from 1951 to June of 1955 I was president.

Q. June of 1955 were you a candidate for office of president? A. I was not, sir.

Q. During the time that you were president of Local

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701 you have any knowledge of any organizational activity at Bryan Manufacturing Company? A. I did, sir.

Q. On behalf of whom was that organizational activity?

A. The UAW-CIO.

Q. Mr. Salomon, did you personally participate in that organizational activity? A. I did, in the early stages of it, yes.

Q. Were there any other individuals participating in that activity? I speak of the UAW-CIO. A. There was, sir.

Q. Who was that? A. Robert McClain, International Representative.

Q. And during the course of that organizational activity were there any organizational—were there any authorization cards obtained from the employees of Bryan Manufacturing? A. There was.

Q. Do you recall how many or approximately how many?

1152

A. As I recall, it was between thirty and forty. I can't give you the exact number.

Q. Mr. Salomon, I hand you what has been received in evidence as General Counsel's Exhibit Number 13, and ask you to examine that document, that card. Do you know what that is? A. I do, sir.

Q. What is it? A. It is a card asking for recognition or an election for the NLRB.

Q. Do you recall whether or not cards were obtained from employees in the organizational activity at Bryan Manufacturing Company? A. Were they obtained from them?

Q. The employees? A. Yes, sir.

Q. Can you recall whether or not they were cards of this type or any other type, or what they were like? A. They were of this type, sir.

Q. Mr. Salomon, did you personally have in your hands any authorization cards from employees at Bryan Manu-

(1174)

facturing Company during the organizational activity there? A. I did, sir.

Q. How do they compare with the card that you have in your hand? A. Well, as I recall, they were of the same nature. However, they were an old style card, which is a little larger than this

1153

card here.

Q. Now, do you recall any discussion at any meetings of Local 701 with respect to organizational activity at Bryan Manufacturing Company? A. I do, sir.

Q. Do you recall when those discussions first occurred? A. Well, in the early stages we were over there working on the plant. I kept the Board informed of what was taking place periodically, at our Board meetings. I can't give you the exact dates of them.

Trial Examiner: When were the early stages of the organization, approximately, then?

The Witness: As I recall, it was the early part of '54 that I was asked to assist the International representative over there.

Trial Examiner: What month, approximately? How early?

The Witness: I think April or May, somewhere in there.

1174

Cross Examination

Q. (By Mr. Poulton) Mr. Salomon, when in June did you relinquish the presidency of Local 701? A. June 13, 1955.

Q. Did you participate, yourself, in the organizational activities at Bryan Manufacturing in Reading in 1954? A. I did, sir.

(1174)

Q. Do you know, sir, on the last date that circulars were given out in Reading? A. Handbills, you are referring to?

1175

Q. Yes, that's correct. A. I can't give you the exact date, but I think it was in June, July, somewhere along there.

1180

Q. Did you ever attend any get-together meetings, gatherings, at Mary Carter's house? A. I did, sir.

Q. When was that? A. We held a series of meetings over there—Mr. McClain and I—when we were working on the plant, on various occasions. I just don't recall the dates.

1224

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Charge Against Labor Organization Or Its Agents

Case No. 7-CB-280.

Date Filed 8-5-55.

Compliance Status Checked by: GJ.

**1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH
CHARGE IS BROUGHT**

Name (1) International Association of Machinists, AFL;
(2) Local 1424, International Association of Machinists,
AFL.

Address (1) 440 National City Bank Building, Cleveland,
Ohio; (2) c/o Donna Munger, 40 Fayette, Hillsdale, Mich-
igan.

The above-named organization(s) or its agents has (have)
engaged in and is (are) engaging in unfair labor practices

within the meaning of Section (8b) Subsection(s) 1(a) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above named labor organizations, through their officers and agents on or about August 10, 1954 executed a collective bargaining contract with Bryan Manufacturing Company, Reading, Michigan for the following unit: "All present and future employees of the Company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act." This contract has been maintained in full force and effect up to the present time and is to remain in full force and effect until August 10, 1956. Yet at the time of the execution of this collective bargaining agreement, the above named labor organizations were not unassisted and/or majority representatives of the employees in the unit set out above as provided in Section 9 (a) and 8 (a) (3) of the Act. Said agreement provides that as a condition of employment, all employees covered by the agreement are required 45 days after the date of execution of the agreement and in the case of new employees 45 days after the date of hiring to become and remain members in good standing in the Union during the term of the agreement. This union security provision has and still is being enforced although at no time have the respondent labor organizations been the representative of the employees as provided in Section 9 (a) and 8 (a) (3) of the Act. Through this act the above-named labor organizations have and are restraining and coercing the employees of Bryan Manufacturing Company in the exercise of rights guaranteed them under Section 7 of the Act and also have and are causing and attempting to cause Bryan Manufacturing

(1224)

Company to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

3. Name of Employer, Bryan Manufacturing Company.

4. Location of Plant Involved (Street, City, and State)
Reading, Michigan.

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory.

6. Identify Principal Product or service, Auto Parts.

7. No. of Workers Employed, 570.

8. Full Name of Party Filing Charge, Maryalice Mead.

9. Address of Party Filing Charge (Street, City, and State) #5 E. Hallet St., Hillsdale, Michigan.

10. Tel. No. Hemlock 7-3276.

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By MARYALICE MEAD

(Signature of representative or person making charge)

INDIVIDUAL

(Title or office, if any)

(Date)

1227

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**Charge Against Employer**

Case No. 7-CA-1303.

Date Filed 6-9-55.

Compliance Status Checked By: GJ.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer BRYAN MANUFACTURING CO.

Number of Workers Employed 570.

Address of Establishment (Street and number, city, zone, and State) READING, MICHIGAN.

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory.

Identify principal product or service—Auto parts.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named Employer has on various dates discharged the employees named below and others not named because of their membership in or activities on behalf of International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (CIO), and because they exercised rights guaranteed in Section 7 of the Act, and has continuously thereafter failed and refused to reemploy them in violation of Section 8 (a)(1) and (3) of the Act:

Marjorie Bounce, Phyllis Gaberdial, Barbara Engel,

1227)

Shirley Loyeless, Nellie Ford, Dorothy Sarles, Lloyd Havens.

The undersigned further alleges that each and every day henceforward said Employer continues to fail and refuse to reemploy the above-named employees constitutes separate and distinct violations of Section 8 (a) (1) and (3).

The above-named Employer has assisted in the formation of, fostered the development of, and dominated the activities of a local whose number is at present unknown, of the International Association of Machinists, AFL, and has recognized and contracted with this union in order to thwart the employees' effort toward self-organization.

By the above and other acts the Employer has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number) Maryalice Mead.

4. Address (Street and number, city, zone, and State) #5 E. Hallett St., Hillsdale, Michigan.
Telephone No. Hemlock 7-3276.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization).

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By MARYALICE MEAD

(Signature of representative or person filing charge)

AN INDIVIDUAL

(Title, if any)

(Date) June 9, 1955.

1230

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**Supplemental Charge Against Employer**

Case No. 7-CA-1303.

Date Filed 8-5-55.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer—Bryan Manufacturing Company.

Number of Workers Employed 570.

Address of Establishment (Street and number, city, zone, and State) Reading, Michigan.

Type of Establishment (Factory, mine, wholesaler, etc.)
—Factory.

Identify principal product or service—Auto parts.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

THIS IS AN ADDITION TO AND DOES NOT REPLACE ANY ALLEGATION CONTAINED IN THE CHARGE DATED 6-9-55.

The Employer, through its officers and agents on or about Aug. 10, 1954 executed a collective bargaining contract with the International Association of Machinists, AFL, for the following unit: "All present and future employees of the Company, excepting foremen, working foremen, office and clerical employees, professional employees, guards and all supervisors as defined in the Act." This contract has been

maintained in full force and effect up to the present time and is to remain in full force and effect until August 10, 1956. Yet at the time of the execution of this collective bargaining agreement neither the IAM-AFL, nor any of its locals, was the unassisted and/or majority representatives of the employees in the unit set out above as provided in Section 9 (a) and 8 (a) (3) of the Act. Said agreement provides that as a condition of employment, all employees covered by the agreement are required 45 days after the execution of the agreement and in the case of new employees 45 days after the date of hiring to become and remain members in good standing in the union during the term of the agreement. This union security provision has and still is being enforced although at no time has the collective bargaining agent been the representative of the Employer's employees as provided in Section 9 (a) and 8 (a) (3) of the Act. Through this Act the Employer through its officers and agents has and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed them under Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)—
Maryalice Mead.

4. Address (Street and number, city, zone, and State)—
#5 East Hallett Street, Hillsdale, Michigan.
Telephone No.—Hemlock 7-3276.

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By MARYALICE MEAD

(Signature of representative or person filing charge)

AN INDIVIDUAL
(Title, if any)

1235

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

Case No. 7-CA-1303

In the Matter of

BRYAN MANUFACTURING CO. and MARYALICE MEAD, an Individual and LOCAL 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, AND INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL *Party to the Contract*

Complaint

It having been charged by Maryalice Mead, an individual, that Bryan Manufacturing Co., hereinafter called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 61 Stat. 136, and as further amended, 65 Stat. 601, 602, hereinafter called the Act, the General Counsel of the National Labor Relations Board; herein called the Board, on behalf of the Board, by the Acting Regional Director for the Seventh Region as agent for the Board, and as designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges the following:

1. Respondent is now and at all times hereinafter mentioned was a corporation organized and existing under the laws of the State of Ohio, and is engaged in manufacturing electrical products. Respondent at all times material hereto operated manufacturing plants in Monticello, Ohio; Peru, Indiana; North Manchester, Indiana; Bryan, Ohio and Reading, Michigan.

2. Respondent in the usual and ordinary course and conduct of its business causes and has continuously caused over

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a long period of time, including the period covered by this Complaint, large quantities of raw

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materials and equipment, used in the manufacture of its products, to be purchased and transported in interstate commerce, from and through states of the United States, including the State of Michigan and causes and has continuously caused large quantities of products produced by it to be sold and transported in interstate commerce, from its various plants situated in the several states, above mentioned. During the calendar year 1954, which is representative of all times material hereto, the Respondent sold and shipped in interstate commerce, finished products valued in excess of \$250,000, and during the aforesaid calendar year the Respondent sold and shipped in interstate commerce from its plant at Reading, Michigan, to points outside the State of Michigan finished products valued in excess of \$50,000, and sold finished products, produced by its plant at Reading, Michigan, valued in excess of \$100,000 to enterprises within the State of Michigan to be directly utilized in the products, processes or services of said enterprises, each of which in turn shipped products valued in excess of \$50,000 out of the State of Michigan.

3. Respondent has been at all times hereinafter mentioned and is now engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

4. Respondent, on or about August 10, 1954, entered into a collective bargaining agreement governing wages, hours and working conditions of its employees at Reading, Michigan, with the following labor organizations: International Association of Machinists, AFL, and Local 1424, International Association of Machinists, AFL, hereinafter jointly called the Union, at a time when the aforesaid Union did not in fact represent a majority of the employees within

the bargaining unit at its Reading, Michigan plant, specified in the contract, to wit: "All present and future employees of the Company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act."

5. Article II and Article III of the aforesaid collective bargaining agreement referred to in paragraph 4 above contain the following

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"union security provisions":

ARTICLE II

CHECK-OFF

Section 1. Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the employees pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization. Deductions shall be made from the pay check received on the last Wednesday of the month, to be applied on the present month's account.

Section 2. Deductions provided for above shall be remitted to the financial secretary of the Union no later than the tenth day of the month following the deduction. The Company shall furnish the financial secretary of the Union monthly pay record of those for whom deductions have been made. The parties agree the check-off authorization shall be in the form attached hereto.

ARTICLE III

UNION SHOP

Section 1. As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or

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in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

~~The aforesaid Check-Off and Union Shop clauses described above have at all time since August 10, 1954, been maintained in force and effect between the Respondent and the Union covering the unit of employees at the Respondent's Reading, Michigan plant described in paragraph 4 above.~~

6. The union security clauses set forth in paragraph 5 above "have been from their inception and continue to be illegal, null and void for the reason that they contravene the proviso in Section 8 (a)(3) of the Act in the following respects, to wit: In that said agreement was made with the aforesaid Union at a time when said Union was not the representative of the employees in the aforesaid described unit, as provided in Section 9 a() of the Act and at a time when said Union was "established, maintained and/or assisted" by the action of the aforesaid Respondent in "recognizing, dealing with, and entering into a collective bargaining agreement with" the union governing the wages, hours, and working conditions

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of its employees in its manufacturing plant at Reading, Michigan, before any of said employees and/or a majority of said employees had designated the Union as their collective bargaining representative.

7. Respondent, by entering into and retaining in effect the illegal union security clauses set forth in paragraph 5 above, has discriminated and is discriminating in regard to hire or tenure of employment of employees to encourage membership in the Union and thereby did engage in and is

engaging in unfair labor practices within the meaning of Section 3 (a) (3) of the Act.

8. Respondent, by the acts alleged in paragraphs 4 through 7 above, has sponsored, dominated, assisted and contributed to the support of the Union and is dominating, assisting and contributing to the support thereof and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

9. Respondent, by the acts set forth in paragraphs 4 through 8 above, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed to them under section 7 of the Act and has thereby engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

10. The activities of the Respondent, as set forth in paragraphs 4 through 9 above in connection with its operations as described in paragraphs 1 through 3 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of the Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (2) and (3) and Section 2 (6) and (7) of the Act.

WHEREFORE, on Oct. 5, 1955, the General Counsel of the National Labor Relations Board; on behalf of the Board, has caused the

(1239)

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Acting Regional Director for the Seventh Region to issue this Complaint against Bryan Manufacturing Co., Respondent herein.

WILLIAM T. LITTLE,
Acting Regional Director
National Labor Relations Board
Seventh Region

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

In the Matter of

LOCAL 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL, AND INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL and MARYALICE MEAD, an Individual and BRYAN
MANUFACTURING Co., *Party to the Contract*

Case No. 7-CB-280

Complaint

It having been charged by Maryalice Mead, an individual, that Local 1424, International Association of Machinists, AFL, and International Association of Machinists, AFL, hereinafter jointly called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 61 Stat. 136, and as further amended, 65 Stat. 601, 602, hereinafter called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Acting Regional Director for the Seventh Region as agent for the Board, and as designated by the Board's Rules and Regulations,

(1242)

Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges the following:

1. Bryan Manufacturing Company, hereinafter called the Company, is now and at all times hereinafter mentioned was a corporation organized and existing under the laws of the State of Ohio and for many years and at all times mentioned herein was engaged in the manufacture of electrical products in its several manufacturing plants situated in Monticello, Ohio; Peru, Indiana; North Manchester, Indiana; Bryan, Ohio and Reading, Michigan.

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2. The Company in the usual and ordinary course of its business causes and has continuously caused over a long period of time, including the period covered by this Complaint, large quantities of raw materials and equipment used in the manufacture of its products to be purchased and transported in interstate commerce from and through the states of the United States including the State of Michigan, and causes and has continuously caused large quantities of products produced by it to be sold and transported in interstate commerce into and through the several states of the United States including the State of Michigan.

3. During the calendar year 1954, which is representative of all times material hereto, the Company sold and shipped in interstate commerce to and through the several states of the United States finished products valued in excess of \$250,000, and during the aforesaid calendar year the Company sold and shipped finished products from its plant at Reading, Michigan, to points outside the State of Michigan valued in excess of \$50,000, and in addition sold finished products to other enterprises within the State of Michigan valued in excess of \$100,000 to be utilized in the production, processes or services of said enterprises, each of which in turn ship finished products outside the State of Michigan valued in excess of \$50,000.

(1242)

4. The Company has been at all times hereinafter mentioned and is now engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

5. Local 1424, International Association of Machinists, AFL, and International Association of Machinists, AFL, jointly called Respondent, are labor organizations within the meaning of Section 2 (5) of the Act.

6. On or about August 10, 1954, the Respondent entered into and thereafter retained in force and effect a collective bargaining agreement with the Company governing the rates of pay, wages, hours of employment and other conditions of employment of the following described unit of employees

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in the Company's plant at Reading, Michigan:

"All present and future employees of the Company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act."

At the time when the aforesaid collective bargaining agreement was entered into, the Respondent did not in fact represent a majority of the employees in the unit set forth above in the Company's plant at Reading, Michigan.

7. The aforesaid collective bargain agreement referred to in paragraph 6 above contained the following union security clauses:

ARTICLE II

CHECK-OFF

Section 1. Upon receipt of a signed authorization of the employee involved, the Company shall deduct from

the employees pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization. Deductions shall be made from the pay check received on the last Wednesday of the month, to be applied on the present month's account.

Section 2. Deductions provided for above shall be remitted to the financial secretary of the Union no later than the tenth day of the month following the deduction. The Company shall furnish the financial secretary of the Union monthly pay record of those for whom deductions have been made. The parties agree the check-off authorization shall be in the form attached hereto.

ARTICLE III

UNION SHOP

Section 1. As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

8. The union security clauses set forth above in paragraph 7 were at all times and continue to be illegal, null and void for the reason that they contravene the proviso in Section 8 (a) (3) of the Act in the following respects, to wit: In that they were entered into at a time when the Respondent was established, maintained and assisted by the Company's unlawful recognition and at a time when the Respondent was not the representative of the employees as provided in Section 9 (a) of the

(1244)

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Act, in the unit described in paragraph 6 above.

9. Respondent, by entering into the aforesaid collective bargaining agreement containing the illegal union security provisions set forth in paragraph 7 above, and by thereafter retaining in effect said collective bargaining agreement and the aforesaid illegal union security clauses, has caused and is causing and is attempting to cause the Company to discriminate against employees at its Reading, Michigan plant in regard to the hire or tenure of employment to encourage membership in the Respondent in violation of Section 8 (a)(3) of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b)(2) of the Act.

10. Respondent, by the acts described in paragraphs 6 through 9 above, did restrain and coerce, and is restraining and coercing the employees in the unit described in paragraph 6 above in the exercise of rights guaranteed in Section 7 of the Act and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8 (b)(1)(A) of the Act.

11. The activities of Respondent, as set forth in paragraphs 6 through 10 above, occurring in connection with the operations of the Company described in paragraphs 1 through 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (b)(1)(A) and (2) and Section 2 (6) and (7) of the Act.

WHEREFORE, on Oct. 5, 1955, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused the Acting Regional Director for the

(1249)

Seventh Region to issue this Complaint against Local 1424, International Association of Machinists, AFL, and International Association of Machinists, AFL, Respondent herein.

WILLIAM T. LITTLE

William T. Little, Acting Regional Director
National Labor Relations Board
Seventh Region

SEAL

1249

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

In the Matter of

LOCAL 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL, AND INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL and MARYALICE MEAD, an Individual and BRYAN
MANUFACTURING Co., *Party to the Contract*

Case No. 7-CB-280

**Answer of Local Lodge 1424, International Association of
Machinists, AFL, and International Association of
Machinists, AFL**

Local 1424, International Association of Machinists, AFL, and International Association of Machinists, AFL (hereinafter referred to as the Respondents) hereby file the following joint Answer to the Complaint in the above-captioned case, dated October 5, 1955, filed by William T. Little, Acting Regional Director of the Seventh Region of the National Labor Relations Board:

1: The Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations or conclusions contained in Paragraph 1 of the Complaint.

(1249)

2. The Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations or conclusions contained in Paragraph 2 of the Complaint.

3. The Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations or conclusions contained in Paragraph 3 of the Complaint.

4. The Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations or conclusions contained in Paragraph 4 of the Complaint.

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5. The Respondents admit the allegations and conclusions contained in Paragraph 5 of the Complaint.

6. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 6 of the Complaint.

7. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 7 of the Complaint.

8. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 8 of the Complaint.

9. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 9 of the Complaint.

10. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 10 of the Complaint.

11. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 11 of the Complaint.

12. The Respondents generally and specifically deny each and every allegation and conclusion contained in Paragraph 12 of the Complaint.

The Respondents hereby assert the following affirmative defenses:

1. Section 10(b) of the National Labor Relations Act forecloses the National Labor Relations Board from proceeding with this case in that the unfair labor practices alleged in the Complaint did not occur within six months from the date of the filing of the charge in this case.

Respectfully submitted,

PLATO E. PAPPS

Plato E. Papps, Chief Counsel

International Association of Machinists; AFL

Dated at Washington, D. C.
this 12th day of October 1955.

I hereby certify that copies of the above have been served this date by Registered Mail, Return Receipt Requested, upon the following parties:

William T. Little, Acting Regional Director
National Labor Relations Board, Seventh Region
314 East Jefferson Street
Detroit 26, Michigan

Miss Maryalice Mead
5 East Hallett Street
Hillsdale, Michigan
Bryan Manufacturing Company
Reading, Michigan.

PLATO E. PAPPS

Plato E. Papps, Chief Counsel

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

In the Matter of

BRYAN MANUFACTURING CO, and MARYALICE MEAD, an Individual and LOCAL 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, AND INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, *Party to the Contract*

Case No. 7-CA-1303

Answer to Complaint

Now, comes, Bryan Manufacturing Company, Respondent in the above entitled cause and in answer to the allegations and conclusions contained in the Complaint issued in the above entitled cause, through its attorneys, Probst, Gallucci & O'Malley, answer as follows:

1. In answer to Para. 1, Respondent admits the allegation contained therein.

2. In answer to Para. 2, Respondent admits the allegation contained therein.

3. In answer to Para. 3, Respondent admits the allegation contained therein.

4. In answer to Para. 4, Respondent denies each and every one of the allegations and conclusions contained therein.

5. In answer to Para. 5, Respondent denies each and every one of the allegations and conclusions contained therein.

6. In answer to Para. 6, Respondent denies each and every one of the allegations and conclusions contained therein.

7. In answer to Para. 7, Respondent denies each and every one of the allegations and conclusions contained therein.

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8. In answer to Para. 8, Respondent denies each and every one of the allegations and conclusions contained therein.

9. In answer to Para. 9, Respondent denies each and every one of the allegations and conclusions contained therein.

10. In answer to Para. 10, Respondent denies each and every one of the allegations and conclusions contained therein.

11. In answer to Para. 11, Respondent denies each and every one of the allegations and conclusions contained therein.

WHEREFORE, on October 15, 1955, Respondent, through its attorneys, Probst, Gallucci & O'Malley, has caused this answer to be filed as hereinbefore contained.

PROBST, GALLUCCI & O'MALLEY

FRANK L. GALLUCCI

Frank L. Gallucci

Manufacturers National Bank Bldg.

Highland Park 3, Michigan

Attorneys for Bryan Mfg. Co., Reading, Mich.

STATE OF MICHIGAN }
COUNTY OF WAYNE } SE:

Frank L. Gallucci, being first duly sworn deposes and says that he is attorney for Bryan Mfg. Co.; that he has read the foregoing Answer, by him subscribed and knows the contents thereof, and that the same is true of his own knowledge.

FRANK L. GALLUCCI
Frank L. Gallucci

(1255)

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss:

Subscribed and sworn to before me this 28th day of October, 1955.

LOUISE H. SQUIRE
Notary Public, Wayne County, Mich.

SEAL

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General Counsel's Exhibit No. 2

AMENDMENT SUPPLEMENTING COMPLAINTS

The Complaints in the above matter heretofore issued on October 5, 1955, are hereby amended as follows:

1. By supplementing paragraph 4 of the Complaint in Case No. 7-CA-1303, with the addition of the following new paragraph: Respondent on or about August 30, 1955, entered into a collective bargaining agreement governing wages, hours, and working conditions of its employees at its Reading and Hillsdale, Michigan plants, with said Local 1424, International Association of Machinists, AFL, at a time when the aforesaid union did not in fact represent a majority of the employees within the bargaining unit at its Reading and Hillsdale, Michigan plants, specified in the contract to wit:

"All present and future employees of the Company at its Reading, Michigan (Plant No. 1), and Hillsdale, Michigan (Plant No. 2), plants excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act."

2. By supplementing paragraph No. 6 of the Complaint in Case No. 7-CB-280, by the addition of the following new

paragraph: On or about August 30, 1955, the Respondent Local Lodge No. 1424, International Association of Machinists, AFL, entered into and thereafter retained in force and effect the collective bargaining agreement with the Company governing the rates of pay, wages, hours of employment and other conditions of employment of the following described unit of employees:

"All present and future employees of the Company at its Reading, Michigan (Plant No. 1), and Hillsdale, Michigan (Plant No. 2), plants excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act."

At the time when the aforesaid collective bargaining agreement was entered into, the Local Lodge No. 1424, International Association of Machinists, AFL, Respondent did not in fact represent a majority of the employees in the unit set forth above in the Company's Reading and Hillsdale, Michigan plants.

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General Counsel's Exhibit No. 3

THIS AGREEMENT made and entered into the 10th day of August, 1954, by and between BRYAN MANUFACTURING COMPANY, its successors and assigns, hereinafter referred to as the "Company", and INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the AMERICAN FEDERATION OF LABOR, hereinafter referred to as the "Union":

ARTICLE

RECOGNITION

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agency for all employees

(1257)

within the bargaining unit consisting of the following: all present and future employees of the Company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act.

Section 2. The Company will bargain collectively with the Union with respect to rates of pay, wages, hours and other conditions pertaining to employment for all of the employees in the unit hereinbefore set forth.

ARTICLE II CHECK-OFF

Section 1. Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the employee's pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization. Deductions shall be made from the pay check received on the last Wednesday of the month, to be applied to the present month's account.

Section 2. Deductions provided for above shall be remitted to the financial secretary of the Union no later than the tenth day of the month following the deduction. The Company shall furnish the financial secretary of the Union monthly pay record of those for whom deductions have been made. The parties agree the check-off authorization shall be in the form attached hereto.

ARTICLE III UNION SHOP

Section 1. As a condition of employment, all employees covered by this

1258

agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new em-

ployees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

ARTICLE IV

- MANAGEMENT POWERS

Section 1. The management of the plant and the direction of the working forces including the right to hire, suspend, transfer, assign work, promote, discharge or discipline for just cause, and to maintain discipline and efficiency of its employees, and the right to relieve employees from duty, because of lack of work or other legitimate reasons, in accordance with this agreement, is vested in the Company. If any employee feels aggrieved by any action of the Company in this respect, he shall have recourse through the grievance procedure set forth in this agreement.

Section 2. It is recognized that the type of products to be manufactured, the work to be done, the scheduling of production, the number of shifts, the working hours of each shift, and the methods, processes and means of manufacture are management's prerogatives provided that the action taken in these regards shall be consistent with this agreement and shall not create conditions which are dangerous to employees. A schedule of the current shifts shall be attached hereto.

Section 3. Supervisory and other employees excluded from the jurisdiction of the Union shall not perform work so as to replace a member of the bargaining unit qualified to do the work

ARTICLE V

NON-DISCRIMINATION

Section 1. The Company agrees that its employees shall have the right to self-organization, to form, join or assist

(1258)

labor organizations, to bargain collectively through representatives of their own choosing; and to engage in

1259

concerted activities for the purpose of collective bargaining.

Section 2. The Company agrees that there shall be no discrimination against any employee or employees because of race, creed or color, union membership, or because of any employee acting as an officer or in any capacity in behalf of the Union, and it will not aid, finance, support or recognize any individual, organization, employee or group of employees in any manner that will destroy, threaten, or otherwise affect the Union's sole and exclusive bargaining status with the Company.

ARTICLE VI

HOURS-OVERTIME

Section 1. The normal work week shall be eight (8) hours a day, and forty (40) hours a week.

Section 2. Time and one-half shall be paid for all work performed over eight (8) hours in any one day or forty (40) hours in any one week. In the event an employee works in excess of eight (8) hours in any one single day, time and one-half of the regular straight time rate will be paid for the first four (4) hours overtime worked in any one day. Double time shall be paid for all work in excess of four (4) hours overtime in any one day, and double time only shall be paid for all work performed on Sundays and holidays listed herein.

Section 3. For the purpose of computing premium payment for work performed as overtime work, absence from work on any one of the preceding days of the work week shall not be counted as time lost, if the absence was due to the death of a member of the employee's immediate family.

(1259)

ily. Neither shall idleness caused by the Company by temporary layoffs, extended holidays, lack of material or facilities, or similar reasons, unless caused by flood, fire or storm, or other causes beyond the control of the Company, be counted as time lost for purposes of computing overtime worked. Credit may be given for time lost for other reasons, at the discretion of the Company.

Section 4. Work performed on the seventh succeeding day in any regularly scheduled five-day work week, shall be paid for at the rate of two (2)

1280

times the regular rate, and such double time payment shall continue until a relief of at least eight (8) hours is provided.

Section 5. Overtime work will be divided as equally as possible among the employees who are capable of doing the work available. Overtime records will be available. An employee given overtime work shall not be given time off later to offset this overtime. Extended overtime should be avoided where a regular employee capable of doing the work is laid off.

ARTICLE VII

PAID HOLIDAYS

Section 1. The following days shall be paid holidays under the agreement:

New Years Day
Memorial Day
July Fourth

Labor Day
Thanksgiving Day
Christmas Day

Section 2. All employees covered by this agreement, who have completed their probationary period, will receive eight (8) hours straight time pay for the holidays herein-

(1260)

before set forth not worked, irrespective of the day of the week on which they fall, subject to the following:

a. If an employee is scheduled to work on any holiday and does not report, he shall forfeit the holiday pay, unless his failure to report is due to good cause. If an employee works on the holiday, he will receive straight time in addition to the unworked holiday allowance.

b. A holiday falling on Sunday shall be observed the next day.

c. An employee must have received a pay check in the week in which the holiday falls. Exceptions will be made where there is absence due to the death in the employee's immediate family, or where an employee was not scheduled to, or was sent home because of lack of work. Employees who are laid off or on leave of absence are not entitled to any holiday pay. Employees on vacation at the time a holiday falls, will not receive extra pay for such holiday.

d. The Company agrees that as a standard practice it will not schedule regular production on any of the above holidays.

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e. A holiday shall consist of that shift, the majority of hours of which fall on the holiday.

ARTICLE VIII

REPORTING AND CALL-IN TIME

Section 1. Any employee called to work or permitted to come to work without having been properly notified there will be no work, will receive a minimum of four (4) hours pay at his regular rate, unless failure to give notice is due to water failure, power failure, labor disputes, or other causes beyond the control of management. The Company may avail itself of the services of such employees for

such minimum period on any work which they are capable of performing.

Section 2. Any employee called in to work after the termination of his regular shift shall receive no less than two (2) hours of work or pay at the applicable overtime rate.

ARTICLE IX

WAGES

Section 1. The wage rates shall be those to be agreed upon between the Company and the Union and set forth in Exhibit "A" attached hereto and made a part hereof.

Section 2. In the event the Company and the Union are unable to agree upon wage rates to be set forth in Exhibit "A", it is understood and agreed that the Union does not forego any rights to strike or take any action that it may deem necessary regardless of any provisions in this contract to the contrary.

Section 3. Any employee who at the date of this agreement is receiving a rate in excess of his classification rate as set forth in Exhibit "A" shall not suffer a reduction in rate.

ARTICLE X

NEW EMPLOYEES

Section 1. All employees engaged by the Company shall be deemed for the first sixty (60) days of their employment to be engaged for a trial period. All

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such employees may be dismissed during their trial period at the Company's discretion. After their trial period, all new employees and apprentices shall be deemed regular employees and seniority shall date back to the original date of hire in the unit.

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ARTICLE XI

VACATIONS

Section 1. Beginning with June 1, 1955, or earlier by mutual consent, the following vacation schedule will apply:

All employees on the Seniority List as of June 1 of the year for which vacations are being scheduled, who have the service required by the schedule below, and who have rendered services to and received services from the Company for a total of thirty (30) pay checks, out of the twelve (12) months immediately preceding June 1st, will receive vacations as follows:

One (1) to two (2) years of service, one (1) week's vacation with forty (40) hours of pay;

Two (2) to three (3) years of service, one (1) week's vacation with forty-eight (48) hours of pay;

Three (3) to four (4) years of service, one (1) week's vacation with fifty-six (56) hours of pay;

Four (4) to five (5) years of service, one (1) week's vacation with sixty-four (64) hours of pay;

Five (5) or more years of service, two (2) weeks' vacation with eighty (80) hours of pay.

If any employee is required to perform work during such vacation period, he shall receive pay at his regular rate in addition to the vacation allowance which he is entitled to above.

The Company may schedule vacations either individually or in groups and may at its discretion stagger vacation periods or have a vacation period designated all at one time in order to facilitate production, giving consideration wherever possible to the desire of the employees and their seniority.

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ARTICLE XII

SENIORITY

Section 1. The Company and the Union agree to put into effect seniority provisions contained in Exhibit "B" attached hereto and to be subsequently negotiated between the Company and the Union.

ARTICLE XIII

SHOP COMMITTEE

Section 1. The Company recognizes and will deal with five (5) duly elected shop committeemen with at least one for each regularly scheduled shift in all matters relating to grievances or interpretations of the agreement.

Section 2. A written list of the shop committee shall be furnished to the Company immediately after their designation, and the Union shall notify the Company promptly of any change in the membership of its shop committee.

Section 3. All shop committeemen shall be paid by the Company at their regular rates for any time necessarily spent during working hours in investigating or handling grievances; it being agreed, however, that such investigations or handling of grievances shall be done without undue loss of time and in no event shall any shop committeeman leave his work for any such purpose without first notifying his foreman.

ARTICLE XIV

GRIEVANCE PROCEDURE

Section 1. Employees shall have the right to be represented in all adjustments of grievances by their shop committeeman.

(1263)

Section 2. The procedure for handling grievances shall be as follows:

a. An employee, who believes he has suffered a grievance, shall first discuss the alleged grievance with his shop committeeman or foreman in an attempt to settle the same. If an employee cannot settle his grievance with the foreman, he shall take it up with the shop committeeman who will take it up with the foreman.

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b. Grievances not adjusted by the foreman and the shop committeeman shall be reduced to writing no later than two (2) working days after the occurrence of the alleged grievance by the union member and his committeeman on approved grievance forms. The foreman will write in the appropriate place in this form his disposition of the matter and sign and date the same, returning one copy to the committeeman no later than two (2) working days after receipt of the same. The written grievance shall then be taken up with the Company at the next scheduled weekly meeting.

c. If the shop committee and the Company cannot arrive at a mutually satisfactory settlement of the grievance, the Union or the Company may call in any representatives of the International Union to assist in attempting to arrive at a mutually satisfactory decision of the grievance.

d. Regular weekly grievance meetings will be held in the plant of the Company except when such meetings are called off or adjourned by agreement between the shop committee and the Company. Any other meetings may be held as may mutually be agreed upon by the shop committee and the Company. The shop committee will be paid for one (1) hour's pay for time spent in discussing grievances with the Company.

Section 3. All grievance involving the employees of the entire department shall be referred directly to the Company committee and the shop committee. It is mutually agreed and understood that any agreement reached between the Company and the Union is binding and cannot be changed by an individual.

Section 4. In the event the two parties to this agreement fail to make satisfactory adjustment of any grievance in the manner hereinbefore mentioned in Steps (a), (b) and (c), it may be submitted to arbitration on a request in writing which shall be made no later than fourteen (14) calendar days after the weekly grievance meeting by either of the parties hereto. It is agreed that the parties shall call upon the Federal Mediation and Conciliation Board to appoint an arbitrator.

1265

Section 5. Each party shall bear the expense of preparing and presenting its own case to the arbitrator. The cost of the mutual arbitrator and incidental expenses mutually agreed to in advance shall be borne equally by the parties hereto.

Section 6. The parties shall conform the decision of the arbitrator no later than one (1) week after receipt of the decision.

Section 7. All grievances will be subject to the regular grievance procedure except that, if any employee is discharged by the Company and believes he has been improperly discharged, he shall within twenty-four (24) working hours after his discharge file with the personnel office of the Company his written complaint concerning such discharges signed by him and his shop committeeman. Upon request, he shall be given the right to talk to his shop committeeman. A copy of this complaint shall be delivered by him within

(1265)

said period to his shop committeeman. A hearing shall be held upon said complaint by the shop committee and the Company within forty-eight (48) working hours from the time of the filing of such complaint. Either the Shop Committee or the Company may call into such hearing such persons in the plant as they deem necessary to give evidence in connection with the complaint. The shop committeeman to whom the copy of the complaint is delivered will notify the employee of the date and time set for the hearing on the complaint. If such employee fails to make the complaint within the time specified herein or if, having made the complaint, he fails to appear at said hearing, unless his failure is due to illness or accident or other causes beyond his control, or upon the hearing is not found to have been improperly discharged, then his discharge shall be absolute as to the date of his discharge. If at said hearing it is found that the employee was improperly discharged or guilty of an offense for which he should be penalized, he shall either be reinstated with such pay or loss of pay or penalties as shall be determined by the shop committee and the Company at such hearing. If no agreement can be reached at such hearing, the grievance shall be subject to the

1266

procedure hereinbefore enumerated, including the right to arbitration.

ARTICLE XV

INSURANCE

Section 1. The group insurance program now in effect in the plant will be continued for the duration of this agreement, and the terms thereof are hereby incorporated herein as fully as though set forth.

ARTICLE XVI**BULLETIN BOARD**

Section 1. The Company agrees to provide the Union with the use of one (1) bulletin board, all notices to be submitted to the office for approval before posting.

ARTICLE XVII**LEAVE OF ABSENCE**

Section 1. Upon written request, the Company may grant leaves of absence. When such leave of absence is granted, the Union shall be given a written copy thereof. Such leaves may be extended by mutual agreement.

ARTICLE XVIII**SAFETY**

Section 1. The Company shall take steps to reasonably assure safe and healthful working conditions.

ARTICLE XIX**GENERAL**

Section 1. An accredited representative of the Union shall be allowed to enter the plant during working hours after applying to the office for permission.

Section 2. The Company may retain, recall or hire persons who, in its opinion, have special ability and are necessary and are required to facilitate tooling or rearranging of the department and the taking of inventory. In the selection of this list, the Company will give reasonable consideration to seniority, but this shall not be a controlling consideration.

(1266)

ARTICLE XX

NO STRIKE OR LOCK OUT

Section 1. The Union and its members agree that they will not, during

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the term of this agreement, cause or permit its members to take part in any sit-down, stay-in, slow-down or strike. The Company agrees not to engage in any lock-out of its employees in this period.

ARTICLE XXI

ALTERATION OF AGREEMENT

Section 1. No agreement, alteration, understanding, variation, waiver or modification of any of the terms or conditions or covenants contained herein shall be made by any employee or group of employees with the Company and in no case shall it be "binding upon the parties hereto unless such agreement is made and executed in writing between the parties hereto."

Section 2. The waiver of any breach or condition of this agreement by either party shall not constitute a precedent in the future enforcement of all the terms and conditions herein.

ARTICLE XXII

AMENDMENTS AND TERMINATION

Section 1. This agreement "shall be in full force and effect from August 10, 1954 to August 10, 1956 and shall automatically remain in full force from year to year thereafter" unless either party shall decide to terminate, amend or modify said agreement, in which event the party deciding to terminate, amend or modify shall notify the other party in writing, by registered mail, not less than sixty (60)

(1268)

days prior to the expiration date of said agreement, specifying that the agreement is to be terminated, or in the event it is desired to amend or modify, then specifying the proposed amendments or modifications.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

BRYAN MANUFACTURING COMPANY
By B. ADAMS,
Vice President

INTERNATIONAL ASSOCIATION OF
MACHINISTS, A.F.L.
By E. L. SCHWARTZMILLER

1268

EXHIBIT B

This exhibit is hereby incorporated into the agreement of August 10, 1954 between Bryan Manufacturing Company and the International Association of Machinists as fully as though set forth therein in full as Article XII—Seniority.

ARTICLE XII

SENIORITY

Sec. 1—The length of service of the employee in the plant shall determine the seniority status of the employee.

Sec. 2—The principle of seniority shall govern and control all cases of decrease and increase of the working forces, providing the remaining employees are capable of satisfactorily performing the available work.

Sec. 3—Preference to assignment to shifts, the choice of new jobs, and higher rated job vacancies shall be given to the senior employees provided they have the ability to perform the work.

(1268)

Sec. 4—Higher rated job vacancies and new jobs will be posted on the bulletin boards for three (3) days by the company. Employees wanting such jobs shall notify the company and the union in writing.

Sec. 5—Employees bidding to higher rated job vacancies of new jobs shall not be eligible to bid on any other job for a period of six (6) months, except in case of abolition of job on which he bid.

Sec. 6—Employees expressing a shift preference must remain on that shift for a period of six (6) months, then shall be eligible to bid on any shift vacancies.

Sec. 7—Shop committeemen shall have top seniority on their shifts in case of lay-offs. At least one committeeman capable of performing available work shall be permitted to work when three (3) or more employees work on overtime or part time work.

Sec. 8—Seniority shall be lost for the following reasons:

- (a) The employee voluntarily quits
- (b) The employee is discharged and not reinstated
- (c) The employee fails to respond to a call to report for work not more than three (3) working days after receipt of notice. Such laid-off employee must return to work within ten (10) working days or forfeit all rights of seniority, unless he is temporarily incapacitated or is employed elsewhere, in which case he must notify the company in writing within three (3) days after receipt of notice to return that he will report within ten (10) days from the receipt of such notice, or as soon as his health permits. Jobs of an emergency nature may be temporarily filled by those next in line of seniority pending the return of laid-off employees notified as hereinabove provided.
- (d) If the employee remains off the payroll of the company for twelve (12) months.

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Sec. 9—Employees must notify the company of any change of address and the company may rely upon the address in its records in giving of notices as provided in Section 8 (c).

Sec. 10—In emergency cases and in cases of shortages of materials, machine breakdowns, and other temporary situations the company may lay off for a period not to exceed five (5) days on the jobs affected without re-arranging the work force.

Sec. 11—The company shall furnish the union, quarterly, with an up-to-date seniority roster.

Dated this 2nd day of Sept., 1954.

BRYAN MANUFACTURING COMPANY

B. ADAMS,

Vice President

INTERNATIONAL ASSOCIATION OF
MACHINISTS—A.F.L.

FLORENCE HOPKINS

LAURA PUCKETT

PAUL PARKER

CLAYTON MUNDY

IOLA JOICE

IMOJENE SPERBECK

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EXHIBIT A

This exhibit is hereby incorporated as fully as though set forth therein in full, as Art. IX of an agreement between Bryan Mfg. Company and International Association of Machinists dated August 10, 1954.

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(1270)

Effective August 10th, 1954 the wage rates hereinafter set forth shall be in full force and effect.

Assembly	1.15
Solder pot oper.	1.25
Fireman-Watchman	1.30
General labor	1.35
General Maintenance	1.48
Shipping & Rec. Clerks	1.55
Tool & Die Operator	2.00

All present employees shall in order to reach the above rates receive an increase of 5¢ per hour as of August 10th, 1954. Effective December 10th, 1954 the above rates shall be increased 5¢ per hour and all employees shall as of December 10th, 1954 receive an additional 5¢ per hour increase. All new employees hired after the date hereof shall be hired 15% below the top rate to be in effect as of December 10th, 1954 and shall receive a 5¢ increase every 30 calendar days until the top rate for the classification is reached.

All employees on the night shifts shall receive an additional 5¢ per hour.

The wage rates set forth above shall remain in full force and effect until August 10th, 1955. Either party may reopen the question of "hourly wage rates only" on or after August 10th, 1955 by giving written notice to other sixty day before

(1271)

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August 10th, 1955.

The Company will continue its practice of granting two 15 minute rest periods during each eight-hour shift.

August 17th, 1954

BRYAN MANUFACTURING COMPANY

B. ADAMS,

Vice President.

INTERNATIONAL ASSOC. OF
MACHINISTS

E. J. SCHWARTZMILJER

*Temporary Bargaining
Committee for
Reading Plant*

WILLIAM JACK

FLORENCE HOPKINS

RUTH YOUNG

VELMA ROOKS

LAURA B. PUCKETT

LILLIE SHAFFER

JEAN M. EDINGER

MYRTLE LONG

JEAN CROOL

IMOJINE SPERBECK

VONETA FORRESTER

MYRIA EASTERDAY

DONNA MUNGER

PAUL PARKER

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General Counsel's Exhibit No. 6

AGREEMENT
BETWEEN
BRYAN MANUFACTURING CO.
AND
INTERNATIONAL ASSOCIATION
OF MACHINISTS
AFFILIATED WITH THE
AMERICAN FEDERATION OF LABOR

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THIS AGREEMENT, made and entered into the 30th day of August 1955, by and between BRYAN MANUFACTURING COMPANY, its successors and assigns, hereinafter referred to as the "Company", and LODGE #1424, of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the AMERICAN FEDERATION OF LABOR, hereinafter referred to as the "Union":

ARTICLE I

RECOGNITION

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agency for all employees within the bargaining unit consisting of the following: all present and future employees of the Company, at its Reading, Michigan (Plant #1), and Hillsdale, Michigan (Plant #2), plants, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act.

Section 2. The Company will bargain collectively with the Union with respect to rates of pay, wages, hours and other conditions pertaining to employment for all of the employees in the unit hereinbefore set forth.

ARTICLE II

CHECK-OFF

Section 1. Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the

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employee's pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization. Deductions shall be made from the pay check received on the last Wednesday of the month, to be applied on the present month's account.

Section 2. Deductions provided for above shall be remitted to the financial secretary of the Union no later than the tenth day of the month following the deduction. The Company shall furnish the financial secretary of the Union monthly pay record of those for whom deductions have been made. The parties agree the check-off authorization shall be in the form attached hereto.

ARTICLE III

UNION SHOP

Section 1. As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

ARTICLE IV

MANAGEMENT POWERS

Section 1. The management of the plant and the direction of the working forces including the right to hire, suspend, transfer, assign work, promote, discharge

(1278)

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or discipline for just cause, and to maintain discipline and efficiency of its employees, and the right to relieve employees from duty, because of lack of work or other legitimate reasons, in accordance with this agreement, is vested in the Company. If any employee feels aggrieved by any action of the Company in this respect, he shall have recourse through the grievance procedure set forth in this agreement.

Section 2. It is recognized that the type of products to be manufactured, the work to be done, the scheduling of production, the number of shifts, the working hours of each shift, and the methods, processes and means of manufacture are management's prerogatives provided that the action taken in these regards shall be consistent with this agreement and shall not create conditions which are dangerous to employees. A schedule of the current shifts shall be attached hereto.

Section 3. Supervisory and other employees excluded from the jurisdiction of the Union shall not perform work so as to replace a member of the bargaining unit qualified to do the work

ARTICLE V

NON-DISCRIMINATION

Section 1. The Company agrees that its employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing; and to engage in concerted activities for the purpose of collective bargaining.

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Section 2. The Company agrees that there shall be no discrimination against any employee or employees because of race, creed or color, union membership, or because of

any employee acting as an officer or in any capacity in behalf of the Union, and it will not aid, finance, support or recognize any individual, organization, employee or group of employees in any manner that will destroy, threaten, or otherwise adversely affect the Union's sole and exclusive bargaining status with the Company.

ARTICLE VI

HOURS-OVERTIME

Section 1. The normal work week shall be eight (8) hours a day, and forty (40) hours a week.

Section 2. Time and one-half shall be paid for all work performed over eight (8) hours in any one day or forty (40) hours in any one week. In the event an employee works in excess of eight (8) hours in any one single day, time and one-half of the regular straight time rate will be paid for the first four (4) hours overtime worked in any one day. Double time shall be paid for all work in excess of four (4) hours overtime in any one day, and double time shall be paid for all work performed on Sundays and the following holidays except in the case of watchmen, firemen and those other jobs mutually agreed to be continuous shift operations.

Section 3. The designated holidays under this agreement are as follows:

1280

New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

In the event that any one of the above holidays shall fall on Sunday, the day observed by the State, Nation or by Proclamation shall be the day observed under this agreement.

(1280)

Section 4. For the purpose of computing premium payment for work performed as overtime work absence from work on any one of the preceding days of the work week shall not be counted as time lost, if the absence was due to the death of a member of the employee's immediate family. Neither shall idleness caused by the Company by temporary layoffs, extended holidays, lack of material or facilities, or similar reasons, unless caused by flood, fire or storm, or other causes beyond the control of the Company, be counted as time lost for purpose of computing overtime worked. Credit may be given for time lost for other reasons, at the discretion of the Company.

Section 5. Work performed on the seventh day following any regularly scheduled five-day work week, shall be paid for at the rate of two (2) times the regular rate, and such double time payment shall continue until a relief of at least eight (8) hours is provided.

Section 6. All overtime work shall be rotated as equally as possible among the qualified employees who are capable of performing the overtime work, so that

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over a reasonable period of time, such employees will enjoy approximately the same opportunity with respect to overtime work. Overtime records shall be made available to the Union. Normally, where an employee works the major work hours of a week on a specific job and it is necessary to operate such job on Saturday and/or Sunday, such employee shall work the overtime on Saturday and/or Sunday except that seniority and the equitable distribution of overtime work shall be considered as above. No employee shall be laid off during the regular work week to offset any overtime the employee may have worked. Extended overtime work shall be avoided when regular qualified employees capable of performing the overtime work are laid off.

(1282)

Section 7. The normal starting and quitting time of each shift shall be established from time to time by mutual agreement between the Company and the Union. It is agreed that such jobs as are established as continuous shift operations shall have a twenty (20) minute paid lunch period during a scheduled eight (8) hour shift.

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ARTICLE VII

PAID HOLIDAYS

Section 1. The following days shall be paid holidays under this agreement:

New Years Day
Memorial Day
July Fourth

Labor Day
Thanksgiving Day
Christmas Day

Section 2. All employees covered by this agreement, who have completed their probationary period, will receive eight (8) hours straight time pay for the holidays hereinbefore set forth not worked, irrespective of the day of the week on which they fall, subject to the following:

a. If an employee is scheduled to work on any holiday and does not report, he shall forfeit the holiday pay, unless his failure to report is due to good cause. If an employee works on the holiday, he will receive straight time in addition to the unworked holiday allowance.

b. A holiday falling on Sunday shall be observed the next day.

c. An employee must have received a pay check in the week in which the holiday falls. Exceptions will be made where there is absence due to the death in the employee's immediate family, or where an employee

(1282)

was not scheduled to, or was sent home because of lack of work. Employees who are laid off or on leave of absence are not entitled to any holiday pay.

d. If a holiday falls within an employee's vacation period, such holiday shall not be considered as part of the vacation period, and the employee shall receive his full vacation pay in addition to holiday pay as hereinbefore provided.

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e. The Company agrees that as a standard practice, it will not schedule regular production on any of the above holidays except on continuous shift operations, and watchmen, firemen classifications.

f. A holiday shall consist of that shift, the majority of hours of which fall on the holiday.

ARTICLE VIII

REPORTING AND CALL-IN TIME

Section 1. Any employee permitted to come to work without having been properly notified that there will be no work, shall receive a minimum of four (4) hours pay at the regular hourly rate, except in a case of labor disputes or other conditions beyond the control of the local management. The Company may avail itself of the services of such employee for such minimum period on any work that may be assigned. Accident occurring the first four (4) hours of the working period will result in the injured employee receiving four (4) hours pay; and injury received by accident during the second four (4) hours of the working period will result in eight (8) hours pay.

Section 2. Any employee called in to work after the terminations of his regular shift shall receive no less than two (2) hours of work or pay at double time.

ARTICLE IX

WAGES

Section 1. The wage rates shall be those to be agreed upon between the Company and the Union

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and set forth in Exhibit "A" attached hereto and made a part hereof, and the rates set forth in Exhibit "A" attached hereto, shall remain in full force and effect for the duration of this agreement, it being specifically understood and agreed that the question of wages, Company cost of insurance, vacation, etc., or any other provisions relating to money may not be opened by either party prior to August 10, 1958.

Section 2. Any employee who at the date of this agreement is receiving a rate in excess of his classification rate as set forth in Exhibit "A" shall not suffer a reduction in rate.

Section 3. If any new classifications are added during the term of this contract, the Company shall set a rate therefore, in conformity with the other rates set forth in Exhibit "A" attached hereto.

ARTICLE X

NEW EMPLOYEES

Section 1. All employees engaged by the Company shall be deemed for the first sixty (60) days of their employment to be engaged for a trial period. All such employees may be dismissed during their trial period at the Company's discretion. After their trial period, all new employees and apprentices shall be deemed regular employees and seniority shall date back to the original date of hire in the unit.

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ARTICLE XI

VACATIONS

Section 1. Beginning with June 1, 1955, or earlier by mutual consent, the following vacation schedule will apply:

All employees on the Seniority List as of June 1 of the year for which vacations are being scheduled, who have the service required by the schedule below, and who have rendered services to and received services from the Company for a total of thirty (30) pay checks, out of the twelve (12) months immediately preceding June 1st, will receive vacations as follows:

6 months to 12 months service with 15 pay checks out of said paid, one (1) week's vacation with twenty (20) hours of pay;

One (1) to two (2) years of service, one (1) week's vacation with forty (40) hours of pay;

Two (2) to three (3) years of service, one (1) week's vacation with forty-eight (48) hours of pay;

Three (3) to four (4) years of service, one (1) week's vacation with fifty-six (56) hours of pay;

Four (4) to five (5) years of service, one (1) week's vacation with sixty-four (64) hours of pay;

Five (5) or more years of service, two (2) weeks' vacation with eighty (80) hours of pay.

If any employee is required to perform work during such vacation period, he shall receive pay at his regular rate in addition to the vacation allowance which he is entitled to

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above.

The Company may schedule vacations either individually or in groups and may at its discretion stagger vacation periods or have a vacation period designated all at one time

in order to facilitate production, giving consideration wherever possible to the desire of the employees and their seniority.

ARTICLE XII

SENIORITY

Section 1. The principle of seniority shall govern and control all cases of decrease and increase of the working forces, providing the remaining employees are capable of satisfactorily performing the available work.

Section 2. All employees on the payroll of the Company as of August 30, 1955, shall have seniority in both plant #1 and plant #2. All employees hired after August 30, 1955, shall have seniority only in the plant in which they are hired. The Company will have sole discretion in the transfer of employees between plant #1 and #2, provided, however, that all new employees hired after August 30, 1955, who are transferred to either plant at the request of the Company shall carry their full seniority over to the other plant, provided further, however, that such employees transferred on their own request shall be considered a new and inexperienced employee with reference to rate of pay and seniority in the plant to which he is transferred.

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Section 3. Preference to assignment to shifts, the choice of new jobs, and higher rated job vacancies shall be given to the senior employees provided they have the ability to perform the work.

Section 4. Whenever an opening occurs in any classification, it shall be filled in the shift in which the opening occurs in the following manner:

Employees with at least six (6) months seniority may register with the office of the Company their desire to fill an opening by classification and shift. A master list of such

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applications shall be maintained on the bulletin board at all times.

The most senior employee having application on file 48 hours previous to the opening occurring shall be given preference for the job and shall be given a trial period of two weeks to demonstrate his ability to learn the job.

Any employee bidding for and accepting or refusing an opportunity to fill an opening must remain in the new classification or shift for a period of six (6) months before he can apply for another opening.

No opening shall be created by means of a layoff and the Company shall reassign in accordance with the seniority provisions of this contract, provided that upon recall employees shall be returned to their previous classifications as quickly as seniority will permit.

It is understood that selection of employees for training in the tool room and maintenance depart-

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ments, which are skilled jobs, shall be filled by upgrading employees, giving due consideration to aptitude, ability and seniority.

Inspection jobs will not be subject to bidding.

Section 5. Employees may be temporarily transferred from one classification to another.

Section 6. In the event of reduction of forces, the following steps shall be taken:

a. Probationary employees shall be laid off first, then the least senior employee plant-wide shall be laid off. The remaining employees must be capable of satisfactorily performing the available work.

b. Employees asked to perform jobs on which they have had no previous training shall be given a trial period of two (2) weeks to demonstrate their ability.

to learn the job and not to exceed thirty (30) days to reach a normal production rate.

Section 7. Shop committeemen and stewards shall have top seniority on their shifts in case of lay-offs. At least one committeeman and steward capable of performing available work shall be permitted to work when three (3) or more employees work on overtime or part time work.

Section 8. Seniority shall be lost for the following reasons:

- a. The employee voluntarily quits.
- b. The employee is discharged and not re-

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instated.

- c. The employee fails to respond to a call to report for work not more than three (3) working days after receipt of notice. Such laid-off employee must return to work within ten (10) working days or forfeit all rights of seniority, unless he is temporarily incapacitated or is employed elsewhere, in which case he must notify the company in writing within three (3) days after receipt of notice to return that he will report within ten (10) days from the receipt of such notice, or as his health permits. Jobs of an emergency nature may be temporarily filled by those next in line of seniority pending the return of laid-off employees notified as hereinabove provided.

- d. If the employee remains off the payroll of the company for twelve (12) months.

- e. Absence in excess of 3 working days without reporting to the Company.

Section 9. Employees must notify the Company of any change of address and the company may rely upon the ad-

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dress in its records in giving of notices as provided in Section 8 (c).

Section 10. In emergency cases and in cases of shortages of materials, machine breakdowns, and other temporary situations the company may lay off for a period not to exceed five (5) days on the jobs affected without re-arranging the work force.

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Section 11. The company shall furnish the union, quarterly, with an up-to-date seniority roster.

ARTICLE XIII

SHOP COMMITTEE

Section 1. The Company recognizes and will deal with all of the accredited members of the Shop Committee, which shall be composed of not less than four (4) or more than six (6) members, with at least one member from each regularly scheduled shift, in all matters which effect or may effect, the relationship between the Company and the Union. The Union shall also select a reasonable number of Shop Stewards, whose duties shall be to adjust grievances in the first instance and otherwise assist the Shop Committee.

Section 2. A written list of the Shop Committee and active Shop Stewards shall be furnished to the Company immediately after their designation, and the Union shall notify the Company promptly of any change in the membership of the Shop Committee or Shop Stewards.

Section 3. All Shop Committee members and Shop Stewards shall be paid by the Company at their regular rates for any time spent during working hours in investigating, handling and adjusting grievances; it being agreed, however, that such investigations or handling of grievances shall be done without undue loss of time and in no event

shall any Shop Committee member or Shop Steward leave his work

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for such purpose, without first notifying his foreman. Shop Committee members shall be paid their regular rates for all time spent in formal negotiations with the Company during the regular working hours.

ARTICLE XIV

GRIEVANCE PROCEDURE

Section 1. Employees shall have the right to be represented in all adjustments of grievances by their shop committee and/or shop stewards.

Section 2. The procedure for handling grievances shall be as follows:

a. An employee, who believes he has suffered a grievance, shall first discuss the alleged grievance orally with his departmental steward or foreman in an attempt to settle the same. If an employee cannot settle his grievance with the foreman, he shall take it up with the steward who will take it up with the foreman.

b. Grievances not adjusted by the foreman and the steward shall be reduced to writing no later than two (2) working days after the occurrence of the alleged grievance by the union member and his steward on approved grievance forms. The foreman will write in the appropriate place in this form his disposition of the matter and sign and date the same, returning one copy to the steward no later than two (2) working days after receipt of the same. The written grievance shall then be taken up by the Company.

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and the Shop Committee at the next scheduled weekly meeting.

c. If the shop committee and the Company cannot arrive at a mutually satisfactory settlement of the grievance, the Union or the Company may call in any representatives of the International Union to assist in attempting to arrive at a mutually satisfactory decision of the grievance.

d. Regular weekly grievance meetings will be held in the plant of the Company except when such meetings are called off or adjourned by agreement between the shop committee and the Company. The shop committee may be held as may mutually be agreed upon by the shop committee and the Company. The shop committee will be paid for one (1) hour's pay for time spent in discussing grievances with the Company.

Section 3. All grievances involving the employees of the entire department shall be referred directly to the Company committee and the shop committee. It is mutually agreed and understood that any agreement reached between the Company and the Union is binding and cannot be changed by an individual.

Section 4. In the event the two parties to this agreement fail to make satisfactory adjustment of any grievance in the manner hereinbefore mentioned in Steps (a), (b) and (c), it may be submitted to arbitration on a request in writing which shall be

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made no later than fourteen (14) calendar days after the weekly grievance meeting by either of the parties hereto. It is agreed that the parties shall call upon the Federal Mediation and Conciliation Board to appoint an arbitrator.

Section 5. Each party shall bear the expense of preparing and presenting its own case to the arbitrator. The cost of the mutual arbitrator shall be borne equally by the parties hereto.

Section. 6. The parties shall conform the decision of the arbitrator no later than one (1) week after receipt of the decision.

Section 7. All grievances will be subject to the regular grievance procedure except that, if any employee is discharged by the Company and believes he has been improperly discharged, he shall within twenty-four (24) working hours after his discharge file with the personnel office of the Company his written complaint concerning such discharges signed by him and his shop committeeman. Upon request, he shall be given the right to talk to his shop committeeman. A copy of this complaint shall be delivered by him within said period to his shop committeeman. A hearing shall be held upon said complaint by the shop committee and the Company within forty-eight (48) working hours from the time of the filing of such complaint. Either the Shop Committee or the Company may call into such hearing such persons in the plant as they deem necessary to give evidence

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in connection with the complaint. The shop committeeman to whom the copy of the complaint is delivered will notify the employee of the date and time set for the hearing on the complaint. If such employee fails to make the complaint within the time specified herein or if, having made the complaint, he fails to appear at said hearing, unless his failure is due to illness or accident or other causes beyond his control, or upon the hearing is not found to have been improperly discharged, then his discharge shall be absolute as to the date of his discharge. If at said hearing it is found that the employee was improperly discharged or

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guilty of an offense for which he should be penalized, he shall either be reinstated with such pay or loss of pay or penalties as shall be determined by the shop committee and the Company at such hearing. If no agreement can be reached at such hearing, the grievance shall be subject to the procedure hereinbefore enumerated, including the right to arbitration.

ARTICLE XV

INSURANCE

Section 1. The following group insurance program will be placed into effect as of September 15, 1955:

Life Insurance	\$1,000.00
Weekly Sickness and Accident	25.00
Daily Hospital Benefit Employee	9.00
Dependent	9.00

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Mile. maximum hospital charges	
Employee	135.00
Dependent	135.00
Maximum Surgery, Employee	200.00
Dependent	200.00

Company will pay entire cost of this insurance for the employee. Dependents coverage will be paid for by the employee at the rate of eighty cents (80c) per week.

ARTICLE XVI

BULLETIN BOARD

Section 1. The Company agrees to provide the Union with the use of one (1) bulletin board, all notices to be submitted to the office for approval before posting.

ARTICLE XVII

LEAVE OF ABSENCE

Section 1. Leaves of absence for a reasonable period of time without pay shall be granted to employees upon written request to the Shop Committee, because of official Union business, personal illness, maternity leave, illness in his family and disability. Requests for leave of absence shall be made in writing to the Shop Committee and if approved and recommended by the Committee shall be submitted to the Company for approval. Each request for leave of absence shall be determined by the Company and the Shop Committee on its own merits and the Company and the Union shall each have a record of all

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leaves of absence. Such leaves may be extended by mutual agreement and seniority shall continue to accumulate during approved leaves of absence.

Section 2. A minimum leave of absence of three (3) months prior to childbirth is required in all maternity cases. No maternity leave of absence shall extend beyond three (3) months following delivery, except upon presentation of a statement from a recognized and licensed physician or doctor.

ARTICLE XVIII

SAFETY

Section 1. The Company shall take steps to reasonably assure safe and healthful working conditions. Records of industrial accidents that occur in the plant will be made available to the Union on request.

Section 2. A safety committee shall be selected by the

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Union to work and cooperate with representatives of the Company from time to time on matters of safety.

ARTICLE XIX

GENERAL

Section 1. An accredited representative of the Union shall be allowed to enter the plant during working hours after applying to the office for permission.

Section 2. The Company may retain, recall or hire persons who, in its opinion, have special ability and are necessary and are required to facilitate tooling or rearranging

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of the department and the taking of inventory. In the selection of this list, the Company will give reasonable consideration to seniority, but this shall not be a controlling consideration.

Section 3. The Company will continue its practice of granting two (2) fifteen (15) minute rest periods during each eight (8) hour shift.

Section 4. The Company shall have the right to employ up to one (1) working foreman for each department in the plant for each shift. These employees shall be excluded from membership in the Union and have the same rights as the foremen with the exception that they shall be permitted to work in addition to supervising. In the event a working foreman is later demoted, he shall be returned to his regular standing on the seniority list from his date of hire to his date of promotion. The working foremen in the maintenance and machinist departments will not be assigned a regular job but will be permitted to work in their respective departments.

ARTICLE XX**NO STRIKE OR LOCK OUT**

Section 1. The Union and its members agree that they will not, during the term of this agreement, cause or permit its members to take part in any sitdown, stay-in, slow-down or strike. The Company agrees not to engage in any lock-out of its employees in this period.

1298**ARTICLE XXI****ALTERATION OF AGREEMENT**

Section 1. No agreement, alteration, understanding, variation, waiver or modification of any of the terms or conditions or covenants contained herein shall be made by any employee or group of employees with the Company and in no case shall it be "binding upon the parties hereto unless such agreement is made and executed in writing between the parties hereto.

Section 2. The waiver of any breach or condition of this agreement by either party shall not constitute a precedent in the future enforcement of all the terms and conditions herein.

ARTICLE XXII**AMENDMENTS AND TERMINATION**

Section 1. This agreement shall be in full force and effect from August 10, 1955 to August 10, 1958 and shall automatically remain in full force from year to year thereafter unless either party shall decide to terminate, amend or modify said agreement, in which event the party deciding to terminate, amend or modify shall notify the other party in writing, by registered mail, not less than sixty (60) days prior to the expiration date of said agreement, spec-

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ifying that the agreement is to be terminated, or in the event it is desired to amend or modify, then specifying the proposed amendments or modifications.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

BRYAN MANUFACTURING COMPANY
By E. J. McFANN

LODGE #1424, INTERNATIONAL
ASSOCIATION OF MACHINISTS, AFL

By; IMOJINE SPERBECK, *Pres.*

ANNA GARY

FLORENCE E. NAPIER

JORLENE HUSTON

WILLIAM JACK

EVERETT HUBBELL

CARL CEDERQUIST

Grand Lodge Rep.

EXHIBIT "A"

This Exhibit is hereby incorporated as fully as though set forth therein in full as Article IX of an agreement between Bryan Manufacturing Company and Lodge #1424 of the International Association of Machinists, affiliated with the American Federation of Labor, dated August 30, 1955.

Effective the dates hereinafter set forth, the wage rates set forth under said dates shall be in full force and effect for the classifications enumerated:

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Classification	Aug. 10 1955	Aug. 10 1956	Aug. 10 1957
Tool & Die Operator	\$2.20	\$2.28	\$2.36
Maintenance Machinists . .	1.80	1.88	1.95
General Maintenance Labor	1.63	1.69	1.75
Chief Maintenance Electrician	1.75	1.83	1.91
Shipping & Receiving & Hi-Low Driver	1.50	1.56	1.62
76 Wire Cutter	1.47	1.53	1.59
General Labor	1.50	1.56	1.62
Fireman	1.45	1.51	1.57
Solder Pot	1.40	1.46	1.52
No. 3 Tuber Operator . . .	1.35	1.41	1.47
Assembly	1.30	1.36	1.42

Girls operating No. 66 presses will receive an additional \$.03 per hour until the new dies are installed and operating.

All new employees shall be hired \$.15 below the top rate in effect at the time of hire and shall receive a \$.05 increase every thirty (30) calendar days until the top rate for the classification is reached.

All employees on the afternoon shift shall receive an additional \$.05 per hour and all employees on the midnight shift shall receive an additional \$.10 per hour unless by mutual agreement between the Company and the Union rotating shifts are established for any continuous shift operation in which event no night shift premium shall be paid.

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Respondent Company's Exhibit No. 1

INTERNATIONAL ASSOCIATION OF MACHINISTS
FOUNDED IN THE CITY OF ATLANTA, GA., MAY 5, 1888
MACHINISTS BUILDING
NINTH STREET AND MT. VERNON PLACE, N.W.
WASHINGTON 1, D. C.

July 17, 1954
Zanesville, Ohio
Subject: Union Recognition

Bryan Manufacturing Company
Reading, Michigan
Attention: Plant Manager

Gentlemen:

Please be advised that the International Association of Machinist represent a majority of the "production and maintenance" employees of your company.

This is to request a meeting at your earliest convenience to discuss the terms of a collective bargaining agreement. I will be available for such meeting anytime the week of July 26, 1954. Please advise me of the time, date and place you wish to meet.

Looking forward to a mutual pleasant and amicable relationship, I am,

Truly yours

/s/ E. L. SCHWARTZMILLER
E. L. Schwartzmiller, Rep.
Route # 2
Zanesville, Ohio

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 7-CA-1303

BRYAN MANUFACTURING COMPANY
and

MARYALICE MEAD, *an Individual*
and

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, AND INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, *Party to the Contract*

Case No. 7-CB-280

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, AND INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO

and

MARYALICE MEAD, *an Individual*
and

BRYAN MANUFACTURING COMPANY, *Party to the Contract*

Mr. Emil C. Farkas, for the
General Counsel.

Probst, Gallucci & O'Malley, by
Messrs. Frank L. Gallucci and
Walter F. Probst, of Highland Park,
Mich., for the Respondent Company.

Messrs. Louis P. Poulton and Plato E.
Papps, of Washington, D. C., and
Mr. Robert R. Simpson, of
Cleveland, Ohio, for the Respondent
Unions.

Before: Earl S. Bellman, Trial Examiner:

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Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed in Case No. 7-CA-1303 on June 9, 1955, and a supplemental charge therein filed on August 5, 1955, by Maryalice Mead, an individual, the General Counsel of the National Labor Relations Board, herein called, respectively the General Counsel and the Board, by the Acting Regional Director of the Seventh Region (Detroit, Michigan), herein

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called the Regional Director, issued the complaint in Case No. 7-CA-1303, dated October 5, 1955, against the Bryan Manufacturing Company, herein called the Respondent Company, alleging that the Respondent Company had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1), (2), and (3), and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, and 65 Stat. 601, 602, herein called the Act. Upon a charge filed on August 5, 1955, in Case No. 7-CB-280, by Maryalice Mead, an individual, the General Counsel of the Board, by the Regional Director, also issued the complaint in Case No. 7-CB-280, dated October 5, 1955, against "Local 1424, International Association of Machinists, AFL," herein called the Local Lodge, and "International Association of Machinists, AFL," herein called the International, and jointly hereafter called the Respondent Unions,¹ alleging that the Respondent Unions had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (b) (1) (A) and (2), and Section 2

¹ When the Respondent Unions and the Respondent Company are all three jointly referred to hereinafter, the term used will be the Respondents. It should be noted that the captions in both cases have been amended in certain minor respects to conform to the facts.

(6) and (7) of the Act.² On October 5, 1955, the Regional Director issued an order consolidating the foregoing cases and a notice of hearing. Said order of consolidating and notice of hearing, along with copies of the complaints, were duly served upon the Respondent Company, the International, the Local Lodge, and the charging party, Maryalice Mead.

With respect to the unfair labor practices, the complaint in Case No. 7-CA-1303 alleged, in substance: (1) that the Respondent Company, on or about August 10, 1954, entered into a collective bargaining agreement with the Respondent Unions, covering certain employees at its Reading, Michigan, plant, at a time when the Respondent Unions "did not in fact represent a majority of the employees within the bargaining unit" at the Reading plant;³ (2) that said agreement contained "union security provisions" in the form of a quoted article entitled "CHECK-OFF" and another

² Except for the subsequently discussed issue of whether Mead was "fronting" for a noncomplying labor organization in filing the above-mentioned charges, all three charges were duly filed. As to service of said charges, the return receipts for registered mail entered in evidence show that the original charge in Case No. 7-CA-1303 was received by the Respondent Company on June 10, 1955; that the supplemental charge in Case No. 7-CA-1303 was received by the Respondent Company on August 8, 1955; and that the original charge in Case No. 7-CB-280 was received by both of the Respondent Unions by or before August 8, 1955, the International's return receipt showing the "Date of delivery" as "8-8-55" and the Local Lodge's return receipt, which has no notation in the space provided for the date of delivery, being postmarked Hillsdale, Michigan, August 6. Since the slight difference in service on the Respondent Unions is not material to the issues, August 8 will hereinafter be considered the date of service on both.

³ The unit at the Reading plant is described as follows:

All present and future employees of the Company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act.

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quoted article entitled "UNION SHOP"; (3) that the aforesaid checkoff and union-shop clauses have "been maintained in force and effect between" the Respondent Company and the Respondent Unions "at all times since August 10, 1954" with respect to the employees in the Reading plant unit; (4) that said union-security clauses "have been from their inception and continue to be illegal, null and void" because the aforesaid agreement was made (a) at a

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time when the Respondent Unions did not represent the employees in the unit involved and (b) at a time when the Respondent Unions were "established, maintained and/or assisted" by the Respondent Company by its "recognizing, dealing with, and entering into a collective bargaining agreement with" the Respondent Unions before said unions had been designated as their collective bargaining representative by "any of said employees and/or a majority of said employees"; (5) that "by entering into and retaining in effect the illegal union security clauses," the Respondent Company has discriminated in regard to hire and tenure of employment to encourage membership in the Respondent Unions, thereby violating Section 8 (a) (3) of the Act; (6) that by the aforesaid acts, the Respondent Company "has sponsored, dominated, assisted, and contributed" to the support of the Respondent Unions and is "dominating, assisting and contributing to the support thereof," thereby violating Section 8 (a) (2) of the Act; and (7) that by all of the foregoing acts, the Respondent Company has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby violating Section 8 (a) (1) of the Act.

The complaint in Case No. 7-CB-280 against the Respond-

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ent Unions, paralleling in major part the factual context of the complaint against the Respondent Company, also recited the making and retaining in force of the August 10 agreement; the Respondent Unions' lack of majority representation among the employees in the Reading plant unit at the time said agreement was entered into; and the inclusion in said agreement of the checkoff and union-shop provisions. In such context, the complaint in Case No. 7-CB-280 more specifically alleged, with respect to the Respondent Unions' unfair labor practices: (1) that the union-security clauses in the agreement "were at all times and continue to be illegal, null and void" because they contravene the proviso of Section 8 (a) (3) of the Act in that, at the time they were entered into, the Respondent Unions were "established, maintained and

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assisted" by the Respondent Company's "unlawful recognition" at a time when said unions were not the representative of the employees in the unit; (2) that "by entering into the aforesaid collective bargaining agreement containing the illegal union security provisions . . . and by thereafter retaining in effect said collective bargaining agreement and the aforesaid illegal union security clauses," the Respondent Unions, in violation of Section 8 (b) (2) of the Act, have caused and are causing and attempting to cause the Respondent Company to discriminate against employees at its Reading plant to encourage membership in the Respondent Unions; and (3) that the Respondent Unions, by the aforesaid actions and in violation of Section 8 (b) (1) (A) of the Act, have restrained and coerced and are restraining and coercing the employees in the Reading plant unit in the exercise of rights guaranteed in Section 7 of the Act.

The International and the Local Lodge filed a joint

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answer in Case No. 7-CB-280 on October 14, 1955. As to the alleged business and commerce facts, the joint answer stated that the Respondent Unions were without knowledge. The joint answer admitted only that the Respondent Unions were labor organizations within the meaning of the Act. In their joint answer, the Respondent Unions "generally and specifically deny each and every allegation and conclusion contained" in paragraphs 6 through 12 of the complaint which contain all of the factual and consequential allegations pertaining to the unfair labor practices. Said joint answer concluded with a single paragraph asserting "affirmative defenses" which read as follows:

1. Section 10 (b) of the National Labor Relations Act forecloses the National Labor Relations Board from proceeding in this case in that the unfair labor practices alleged in the Complaint did not occur within six months from the date of the filing of the charge in this case.

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The answer of the Respondent Company in Case No. 7-CA-1303, for which the General Counsel gave no date for filing in his recital upon offering it, and to which the General Counsel made no objection as to untimely filing, bears on its first page two "Received" stamps of the Seventh Regional Office, one showing the date, October 18, and the other the date, October 31, 1955. The affidavit on the second page of the answer was sworn to before a Notary Public on October 28, 1955. After admitting the business and commerce allegations contained in the first three paragraphs of the complaint, the answer of the Respondent Company denied "each and every one of the allegations

* I accept the above date, which appears on the "Received" stamp of the Seventh Regional Office, rather than the later date, October 20, stated on the record.

and conclusions contained" in paragraphs 4 through 11 of the complaint, which contain all of the factual and conclusionary allegations pertaining to the unfair labor practices. The answer of the Respondent Company contained no reference to any affirmative defenses.

On October 19, 1955, following telephone conversations in which it was ascertained that it was mutually agreeable to all of the Respondents herein to do so, the Regional Director issued an order rescheduling the hearing in this matter from October 26 to November 2, 1955.

In the meantime, prior to the opening of the hearing in the instant matter, the International, in a 3-page document dated October 25, 1955, petitioned the Board to revoke a subpoena duces tecum. Said subpoena has been issued on October 19; had been addressed to the International Association of Machinists, AFL, 440 National City Bank Building, Cleveland, Ohio; and required the production of various records, including such things as all authorization cards, minutes of all meetings, all expense accounts, all hand bills and circulars, and all contracts or agreements, which pertained to its activities at the Reading plant. On October 28, 1955, Stephen S. Bean, who had been duly designated to serve as the Trial Examiner in this matter, denied the International's petition to revoke. In a 3-page document dated

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November 1, 1955, the International requested the Board for "special permission to appeal". Trial Examiner Bean's denial of its petition to revoke, and asked, for reasons previously advanced in its original petition, that the Board grant its "petition to revoke the subpoena."

Pursuant to the order rescheduling the hearing, a hearing was held in Hillsdale, Michigan, on November 2, 3, 4, 7, 8, 16, 17, 18, 21, 22, and 23, 1955. Before me, the Trial

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Examiner duly designated to serve in place of Stephen S. Bean. The General Counsel, the Respondent Company, and the Respondent Unions were represented by counsel and participated throughout the hearing.⁵ The charging party was present throughout the hearing; but participated only when called as a witness. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the opening of the hearing, counsel for the Respondent Unions, informing me of the above-indicated request to appeal which the International had filed with the Board, addressed a motion to me for revocation of a similar subpoena which had been addressed to the Local Lodge, and which required the production of the same type of records as the subpoena which had been addressed to the International. The Respondent Company also moved to quash still another *subpoena duces tecum* addressed to it, which required the production of certain payroll information for the month of August 1954. Among various reasons advanced during oral argument for granting these two motions to revoke were that both of the subpoenas required the production of records for periods substantially earlier than 6 months prior to the filing of the respective charges, and hence involved matters which Section 10 (b) precludes finding to constitute unfair labor

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practices. In addition, this same argument involving Section 10 (b) was basic to the positions of the Respondent Company and the Respondent Unions in their respective motions to dismiss the respective complaints, which motions were made at the opening of the hearing and were also

⁵ Both of the Respondent Unions were represented throughout the hearing by Attorney Poulton. The Respondent Company was represented at the hearing by Attorney Gallucci.

argued orally. It should be noted that during the somewhat extended argument on the foregoing four motions, the General Counsel, in opposing said motions and in outlining his theory of the case, recognized the limiting effect of Section 10 (b) with respect to findings of unfair labor practices as to actions taking place more than 6 months prior to the filing of the respective charges.

After considering the opening oral argument, I reserved ruling on the respective motions of the Respondent Company and the Respondent Unions to dismiss the respective complaints, and denied the respective motions of the Respondent Company and the Local Lodge to revoke the respective subpoenas directed to them. While various contentions of the parties will require subsequent discussion of subpoena matters, it is sufficient to note at this point that the Local Lodge, in a 3-page document dated November 4, 1955, requested special permission to appeal my ruling to the Board; that the Respondent Company did not seek to appeal, but complied with the subpoena addressed to it; that before the close of the General Counsel's case-in-chief, the Board denied the respective requests of the International and the Local Lodge for special permission to appeal from the denials of their petitions to revoke the *subpoenas duces tecum*; that thereafter both the International and the Local Lodge refused to comply with the respective subpoenas; and that the General Counsel ultimately chose to rest his case-in-chief without seeking enforcement of either of the subpoenas addressed to the Respondent Unions.

While no useful purpose would be served by summarizing all of the

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procedural matters which arose during the course of the hearing, certain additional matters should be noted now, while others will be alluded to or ruled upon subsequently in this Report. On the first day of the hearing, and before

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witnesses were called, the General Counsel moved to amend the complaint in both cases by adding allegations to each complaint with respect to an agreement of about August 30, 1955, allegedly entered into between the Respondent Company and the Local Lodge, which included not only the employees previously covered in the Reading plant, but also involved all similar classifications at a second plant in Hillsdale, Michigan. The effect of the proposed amendments, of which notice had been given by letters dated October 21, 1955, to the respective Respondents, was to place the August 30, 1955, agreement in issue in the respective complaints as violative of the same Sections of the Act as have been above detailed with respect to the 1954 agreement. The foregoing motions to amend the complaints were granted without opposition, and the respective answers were amended to include denials of the allegations thus added.

Upon my granting the foregoing amendments, the Respondent Unions moved to dismiss the complaint in Case No. 7-CB-280 on the ground that the controversy had been rendered moot because the 1955 agreement had superseded the 1954 agreement. Following oral argument on this motion, I denied said motion without prejudice to its renewal. Thereafter it was established by agreement among the parties that the correct name of the IAM's local is Local Lodge No. 1424. The Respondent Unions also amended their answer to admit the allegations of the complaint in Case No. 7-CB-280 as to the Respondent Company's business and commerce. The Respondent Company acknowledged on the record that "on information and belief," the International and Local Lodge were both labor organizations within the meaning of the Act.

Before the General Counsel rested his case-in-chief, he sought to introduce into evidence four documents, numbered for identification as General Counsel's Exhibits 9, 10,

11, and 12. These four documents pertain to two attempts by the General Counsel to subpoena as a witness the

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representative of the International who signed the 1954 agreement, E. L. Schwartzmiller. Without considering now the ultimate significance of the failure of Schwartzmiller to appear at all as a witness at the hearing, the aforesaid offered exhibits are hereby rejected because, after giving much thought to unusual factors involved, I am not convinced that a sufficient foundation has been laid to establish service of either of the two subpoenas on Schwartzmiller.⁶

In due course, the General Counsel eventually, albeit with apparent reluctance, announced that he would rest his case without seeking enforcement of the *subpoenas duces tecum* against the Respondent Unions. The Respondent Unions thereupon moved to dismiss on the ground that the General Counsel had not established a *prima facie* case. The Respondent Company made a similar motion to dismiss. Oral argument on the record was then held upon the question of whether or not the General Counsel had established a *prima facie* case. Upon considering the matter, I denied the motions of the Respondents to dismiss, without prejudice to their renewal.

Of the various procedural problems arising during the course of the cases of the Respondent Company and the Respondent Unions, one needs to be mentioned at this point, an amendment which I granted to the answer of the Respondent Unions which had the effect of adding the fronting issue to the above summarized issues in the instant matter. By said amendment, which was granted only after

⁶ This is not to say that the Board or the General Counsel, in an administrative capacity, may not deem it appropriate and desirable to look further into certain aspects of this matter.

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full consideration of the contentions of the parties, the following additional affirmative defense was added to the answer of the Respondent Unions:

2. The Charges in these cases were filed by the Charging Party on behalf of and at the instigation of Local 701, UAW-CIO, a union not in compliance with the filing requirements of

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the National Labor Relations Act, as amended, at the time the Complaint in this matter was issued; therefore, the Complainant in these cases should be dismissed since the Charging Party is "fronting" for a non-complying union.

Before the close of the hearing, the Respondent Unions and the Respondent Company renewed and made motions to dismiss on various grounds. In essence said motions, upon which I reserved ruling, pertain to Section 10 (b) of the Act, fronting, failure of the General Counsel to establish a *prima facie* case, and failure of the evidence to establish various allegations of the complaints. For reasons subsequently appearing herein, all of said motions to dismiss upon which ruling has been reserved are hereby denied, except to the extent that findings and conclusions which follow indicate specifically that certain allegations of the complaints have not been sustained, and are dismissed.

Mention should also be made of an offer of proof by the General Counsel on the fronting issue. Said offer was rejected, without prejudice to resuming the hearing if it were thereafter decided that such evidence should be received. For reasons which appear below, I have decided not to reopen the hearing to receive apparently extensive evidence in connection with said offer of proof. All parties were afforded opportunity to argue orally upon the record and to file briefs and proposed findings and conclusions.

sions. In view of the extent to which the parties had already argued on the record, all parties waived oral argument, preferring to file briefs. Pursuant to an extension of time to December 27, 1955, granted by the Chief Trial Examiner, briefs have been filed by the Respondent Company, the Respondent Unions, and the General Counsel.

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On the basis of the entire record in the case; my observation of the demeanor of the witnesses at the hearing; a careful analysis of the evidence, which is in many respects confused and contradictory; and my consideration of the various positions taken by the parties during the hearing and in their briefs; I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT COMPANY

The Bryan Manufacturing Company, herein called the Respondent Company, is an Ohio corporation which has, at all times herein material, been engaged in manufacturing electrical products at several plants which it has been operating in Bryan, Ohio; Monticello, Ohio, North Manchester, Indiana; Peru, Indiana; and Reading, Michigan. In the usual and ordinary course and conduct of its business, the Respondent Company has, over a long period of time, continuously caused large quantities of raw materials and equipment, used in the manufacture of its products, to be

The record is hereby corrected in the following particulars:

Page 892, line 4, the word "required" is corrected to read "recorded."

Page 893, line 23, the word "offense" is corrected to read "defense."

Page 1043, line 10, "and now this continues" is corrected to read "and no more continues."

Page 1105, line 3, the word "that" is corrected to read "what."

Page 1105, line 4, "is not the issue" is changed to read "has put in issue."

The word "administerial" is corrected to read "ministerial" whenever it appears on pages 1104 to 1106.

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purchased and transported in interstate commerce, from and through States of the United States, including the State of Michigan. The Respondent Company has similarly continuously caused large quantities of its products to be sold and transported in interstate commerce, from its various plants situated in the three above-mentioned States, into and through the several States of the United States, including the State of Michigan.

During the calendar year 1954, which is representative of all material times, the Respondent Company sold and shipped in interstate commerce, as above described, finished products valued in excess of \$250,000. Also during said calendar year of 1954, the Respondent Company sold and shipped in interstate commerce, from its plant at Reading, Michigan, to

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points outside of the State of Michigan, finished products valued in excess of \$50,000.* In addition, during the aforesaid calendar year, the Respondent Company sold finished products, produced by its Reading plant, valued in excess of \$100,000, to enterprises within the State of Michigan to be directly utilized in the production, processes, or services of said enterprises, each of which in turn shipped finished products outside of the State of Michigan, which were valued in excess of \$50,000.

The only plants of the Respondent Company which are involved in the instant matter are its above-mentioned plant at Reading, Michigan, and a new plant, which commenced operations shortly before the opening of the hearing in the instant matter, and which is located in Hillsdale, Michigan, some 12 miles from the Reading plant. These two plants are hereinafter called, respectively, the Reading plant and the Hillsdale plant.

* The brief of the Respondent Company more specifically identifies the products of its Reading plant as "electrical wire assemblies."

The respective answers admit the allegations of the respective complaints that the Respondent Company has been at all material times engaged in commerce within the meaning of the Act, and I so find.

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II. THE LABOR ORGANIZATIONS INVOLVED

International Association of Machinists, which is referred to herein as the International, and also as the IAM, the term usually used for it by the witnesses, is a respondent in Case No. 7-CB-280. It is a labor organization presently affiliated with the American Federation of Labor-Congress of Industrial Organizations. However, at the time of the events subsequently discussed herein, the International was affiliated with the American Federation of Labor.

Local Lodge No. 1424, International Association of Machinists, also a respondent in Case No. 7-CB-280, is herein called the Local Lodge. It is a local lodge of the International which admits to membership employees of the Respondent Company's Reading and Millsdale plants. The Local Lodge is a labor organization within the meaning of the Act.

Local 701, International Union, United Automobile, Aircraft & Agricultural Implement Workers of American, is presently affiliated with the American Federation of Labor-Congress of Industrial Organizations, but was formerly affiliated with the Congress of Industrial Organizations. It is the labor organization for which the Respondents contend that the charging party, Maryalice Mead, was fronting when she filed the charges in the instant matter. The aforesaid organization, which is a labor organization within the meaning of the Act, will be referred to as Local 701. As appears more fully below, it rendered assistance to its parent organization, herein referred to as the

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UAW, in organizing activities among employees at the Reading plant. Local 71 is an amalgamated local representing employees of several plants in Hillsdale and vicinity.

III. THE UNFAIR LABOR PRACTICES

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A. *A general survey of the setting, the events, the evidence, and the issues*

In a case such as this one, which involves many evidentiary and legal problems, some of them complex and others novel, it is usually helpful to present at the outset a general picture of what is involved. Thus the purpose of this section is to round out what has already been stated in such a way as to provide general orientation to the more detailed findings which follow, and to indicate the interrelationship of the events and the issues.

Broadly speaking, this case is concerned with whether or not there has been infringement upon the self-organizational rights of the Respondent Company's production and maintenance employees, primarily at its Reading plant. The material events begin about the middle of July 1954, when the IAM requested recognition for, and the UAW began signing up employees of the Reading plant, who are predominantly women. In conducting its activities, the UAW was assisted by some of the members of Local 701, including the president thereof, Farn Salomon, who figures prominently in the fronting problem.

On August 16 and 17, 1954, before the UAW secured designations from a majority of the employees or made any

? There is some evidence that preliminary activities by the UAW got under way somewhat earlier.

claim as to representation to the Respondent Company,¹⁰ numerous conversations, negotiations, and meetings pertaining to the IAM, often involving the above-mentioned representative of the International, E. L. Schwartzmiller, took place at various points in Reading, including the plant and a meeting hall. One of the major evidentiary problems pertains to determining as nearly as

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possible, from the voluminous evidence of numerous witnesses called by the General Counsel, what actually occurred during this 2-day period when Schwartzmiller, so far as the evidence shows, made his first appearance among the employees of the Reading plant. It should be noted at this point, however, that Schwartzmiller's appearance in Reading had been preceded by negotiations elsewhere which had resulted in the basic provisions of an 11-page general agreement which is dated August 1, 1954, and which has two supplements, the first covering wages, dated August 17, 1954, and the second covering seniority, dated September 2, 1954.

The foregoing agreement, to which the Respondents have given effect, is the one involved in the above-described original allegations of the two complaints in this matter. Thus a determination of when and how that agreement was negotiated and signed, particularly with respect to other events, is quite important, and the positions of the parties with respect thereto are in sharp conflict. The General Counsel contends that it was on August 10, 1954, before the Respondent Unions had engaged in any organizational activities among the employees covered thereby; that the Respondent Company and the International

¹⁰ There is no contention that the UAW ever secured or claimed such a majority, and the General Counsel concedes that the *Midwest Piping* doctrine is not herein applicable.

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"signed a union security contract which required membership in Respondent IAM as a condition of employment." By contrast, the Respondent Unions and the Respondent Company fix the execution of the agreement as August 17, after the employees had ratified it at meetings conducted by the International. The difficult evidentiary problems which arise in determining such issues are augmented by the fact that neither the then vice president of the Respondent Company, Adams, who signed the agreement, nor the representative of the International who signed it, Schwartzmiller, appeared as witnesses at the hearing.

Leaving for the moment various problems as to evidence, dates, and chronology, it is apparent that by the end of August 1954, the UAW had

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engaged in the last of its organizational activities, the distribution of a leaflet outside the plant, and that Schwartzmiller had conducted a general meeting of employees in Reading at which officers for the IAM were elected. It should also be noted that about this time, or not long thereafter, President Salomon of Local 701 was informed by two different international representatives of the UAW that because of "a non-raiding pact" between the UAW and the IAM, they were "to drop all matters" pertaining to organizing the Reading plant employees because the IAM had "a signed agreement there."

Turning now briefly to the fronting issues, it is significant that while Salomon conveyed the foregoing instructions of the international representatives to the other officers of Local 701, he personally did not like those instructions. However, Salomon does not again enter the picture until the spring of 1955, when a number of employees who were not satisfied with conditions at the Reading plant or the accomplishments of the IAM there, held a number of meet-

ings in private homes. Salomon was present at and participated in some of these meetings, in which the charging party also participated. In addition, before Mead was accompanied by Salomon to the Regional Office in Detroit when she filed the original charge in Case No. 7-CA-133 on June 9, 1955, she had also on several occasions seen Salomon in regard to problems of employees at the Reading plant, where Mead continued to be employed until October 1955.

It is clear that Local 701 was not in compliance when the two complaints in the instant matter were issued on October 5, 1955. But various questions as to Local 701's intermittent compliance and lack of compliance, and the many contentions of the parties as to fronting matters, will be reserved for treatment until toward the end of this Report because I am convinced, after protracted study of the record, that some aspects of these complicated fronting issues can best be evaluated after other matters have been determined.

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Chronologically speaking, the remaining issues center around events during August 1955. These issues were added at the beginning of the hearing by amendments to the complaints which have already been summarized. They pertain to a 3-year agreement, dated August 30, 1955, which embraces the production and maintenance employees at the Reading plant and at a second plant in Hillsdale, which the Respondent Company was apparently in the process of acquiring at the time the agreement was being negotiated, and which did not start operations until approximately 2 months after the agreement was signed. This agreement, a printed copy of which is in evidence, was signed by six employees for the Local Lodge, and also by Carl Cederquist, a Grand Lodge Representative, who is mentioned at various places during the testimony, but was not a witness

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at the hearing. However, Eugene McFann, who signed the August 1955 agreement for the Respondent Company, was a witness and testified concerning circumstances surrounding the negotiations and execution of this current agreement, which still has well over 2 years to run. It should be noted at this point that while majority status is challenged by the General Counsel as to both the August 1954 agreement and the August 1955 agreement, the unit included in neither agreement is challenged. In short, there is no contention that the expansion of the unit in the 1954 agreement to include the same employee classifications at the recently opened Hillsdale plant, along with those same classifications at the Reading plant, makes the thus expanded unit in the 1955 agreement in any way inappropriate.

What has been said thus far places the general issues in their chronological setting and suggests the nature of some of the evidentiary problems. Broadly speaking, the witnesses fall into 2 groups. The first group consists of 23 witnesses called with respect to the unfair labor practice issues related to the 2 agreements. Of these witnesses, 22 were called by the General Counsel, 3 of them under Rule 43 (b), and 1

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witness was called by the Respondent Company. On the fronting issues, the Respondent Unions called 3 witnesses, 1 of them under Rule 43 (b), and the General Counsel called 4 witnesses. For the present, our discussion will be directed to the evidentiary and credibility problems pertaining to the evidence adduced on matters related to the unfair labor practices.

At the outset, it should be noted that much of this evidence is essentially circumstantial in nature and might not have been adduced had there been compliance with the already mentioned two subpoenas directed, respectively, to the International and to the Local Lodge. In fact, the parties take sharply differing positions as to the eviden-

tiary bearing of this failure to comply. The General Counsel's brief describes this failure as "contemptuous refusal of the Respondent Unions to produced subpoenaed records which could have revealed" the majority status, and views it as "incontestable proof of the lack of majority." In contrast, the Respondent Unions essentially contend that their refusal to comply with the subpoenas has no evidentiary bearing whatsoever, because it was based on valid legal grounds, and that said refusal in no way lightens the General Counsel's burden of establishing lack of majority by a *prima facie* case. In taking a position similar to that of the Respondent Unions, the Respondent Company's brief questions why the General Counsel did not choose to seek enforcement of the subpoenas; answers that the inference is clear that the General Counsel "did not deem it to his advantage to compel production of the requested information"; and asserts that the General Counsel "cannot now be heard to rely upon any spurious inference it may feel can arise from such a legal and valid refusal."

While it will be necessary in a subsequent section of this Report to appraise the failure of the Respondent Unions to produce any evidence on certain matters, I want to make it clear that, after giving much thought to the matter, I am not relying in any way in reaching my determinations herein on the failure of the Respondent Unions to comply with the subpoenas. Further, I do not believe that any inference adverse to the General Counsel can be drawn from his failure to seek enforcement

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of the subpoenas involved, when all of the circumstances of this case are considered. Similarly, I draw no adverse inference because counsel for the Respondent Company, after first insisting that the testimony of Schwartzmiller (whose presence two subpoenas for the General Counsel had failed to produce) was necessary to the Respondent

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Company's defense, later chose to waive calling Schwartzmiller as a witness, after having failed for approximately a week to effect service of two subpoenas on Schwartzmiller. But the question of the failure of the Respondent Unions to call Schwartzmiller as a witness is another matter, which will be discussed later. In any event, the General Counsel was not under any obligation to call Schwartzmiller as a witness in his case. Everything considered, I believe it is enough to say at this point that, after thoughtful analysis of the contentions of the parties and what I believe to be applicable legal principles under all of the unusual circumstances here involved, I draw no inference adverse to any of the parties because of any matter pertaining to any subpoena which was issued.

Having thus divorced subpoena problems from evidentiary and credibility problems, we turn now to the latter problems. From what has been said, it must be clear that I am convinced that the voluminous evidence adduced by the General Counsel on the unfair labor practice aspects involved in the instant matter must be carefully sifted to determine as precisely as possible what material facts have been established thereby. This I have patiently done, always duly mindful of the contentions of the parties with respect to credibility problems, and of the fact that strong feelings have been generated by the circumstances involved in this case.

We come now to some general conclusions with respect to credibility contentions and problems applying to all issues in the instant matter. It is evident that with many witnesses testifying as to numerous

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different matters, it would protract this Report greatly to summarize all of the testimony, or to spell out fully the confusion and inconsistencies therein, much of which is not too surprising, in view of the fact that, with respect to the

events of August 1954, there had been a lapse of almost 15 months before testimony was given in November 1955. Moreover, in the light of my observation of the demeanor of the witnesses at the hearing, and after intense scrutiny of the record, all of which has been carefully read, and parts of which have been reread and rechecked several times, I cannot agree that the testimony given by the General Counsel's witnesses is generally unreliable and unworthy of belief.¹¹ True, a number of the General Counsel's witnesses had manifest varying degrees of interest in the UAW. But there were other witnesses for the General Counsel, whose versions were not materially different on most matters, who were not shown to have been interested in or partisan to the UAW. Everything considered, I have become convinced that, in the main, the witnesses for the General Counsel, almost all of whom were under subpoena, attempted to tell the truth, as best they could recall it. In any event, I am satisfied that my critical analysis of the testimony, which has resulted in a composite picture, furnishes a reliable basis for the findings made throughout this Report.¹²

¹¹ The Respondent Company's brief characterizes the General Counsel's witnesses as "a very small and dissident group who would have been against almost anything decided upon by the majority of the employees"; alludes to the "demeanor and attitude of the disgruntled minority"; and asserts that these witnesses manifested "varying degrees of prejudice in their testimony." The similar position of the Respondent Unions is shown by the following quotation from their brief:

The General Counsel's witnesses, all of whom were UAW-CIO adherents, dissatisfied with their collective bargaining agent, and in general disgruntled employees, were certainly not reliable or credible witnesses.

¹² This is not to say that individual witnesses were not confused on certain matters or that there were not variations in their objectivity and convincingness. But it also should be noted that the candor with which some witnesses admitted, during long and searching examinations, that they could not be certain as to dates or the exact words used, only serves to add credence to what careful study of their testimony shows that they honestly believed to be the facts.

Before turning to a more detailed analysis of the events during the summer of 1954, which surround the signing of the first agreement and its two supplements, some observation should be made with respect to the Section 10 (b) contentions, which will await ultimate decision until the facts have been further developed. The General Counsel concedes that the 6-month limitation of Section 10 (b) of the Act precludes currently finding the *execution* of the 1954 agreement to be an unfair labor practice, and also precludes currently finding its enforcement to be an unfair labor practice as to the respective Respondents, at any time prior to the respective periods beginning 6 months prior to the respective charges in these two cases. However, this concession in no way detracts from the crucial nature of the earlier events, because at the core of the General Counsel's contentions as to all of the unfair labor practices is his fundamental position that, because of the circumstances prevailing when made, the original union-security agreement of 1954 has never been valid or legal, since it has never met certain overriding requirements of Section 8 (a) (3) of the Act. In essence, said pertinent provisions, which are contained in the first of the two provisos in Section 8 (a) (3), are that (a) the labor organization shall not be established, maintained, or assisted by any action which is an unfair labor practice, and that (b) such labor organization shall be the representative of the majority of the employees in an appropriate unit when the agreement is made.

B. *The agreement dated August 10, 1954,
as supplemented; its provisions,
negotiation, and execution*

A photostatic copy of the original signed agreement dated August 10, 1954, and its two signed supplements,

provides one of the uncontested elements in this case. We start with a description of this document, a summary of the pertinent provisions of its three component

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sections, and an explanation of the dates and signatures contained on each of these three sections, which on their face show differences as to type, margin, arrangement, and paper.¹³

The first and longest section of the 1954 agreement contains 11 pages, which obviously form one unit. This unit, clearly a basic labor contract containing 22 articles, opens with a prefatory paragraph stating that said agreement was "made and entered into the 10th day of August, 1954," between the "BRYAN MANUFACTURING COMPANY" and the "INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with AMERICAN FEDERATION OF LABOR." It concludes on page 11 with two signatures, that of Vice President Adams for the "BRYAN MANUFACTURING COMPANY" and that of Schwartzmiller for "INTERNATIONAL ASSOCIATION OF MACHINISTS, A.F.L." The signatures of these two individuals, neither of whom was called as a witness, immediately follow a concluding paragraph on page 11 which reads:

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year above written.

¹³ Such differences, especially in the paper, were even more apparent from the original document, which was used throughout the hearing, than from the photostatic copy in evidence. Incidentally, I have no doubt that the placement of EXHIBIT B ahead of EXHIBIT A in this document, a factor which caused some confusion in the examination of witnesses at the hearing, was a clerical inadvertence, probably occurring at the time the original agreement was re-assembled after microfilming at the office of the International in Washington, and that originally EXHIBIT A preceded EXHIBIT B, as the dates thereon indicate.

These 11 pages, which we will refer to as the basic agreement, cover in considerable detail such basic subjects as are customarily included in a collective bargaining contract, except that 2 of the 22 articles, one entitled WAGES and the other entitled SENIORITY, specify that the respective rates and provisions as to wages and as to seniority shall be those subsequently agreed upon and incorporated as exhibits. The one covering wages was to be designated as Exhibit A, and the other covering seniority as Exhibit B. Both were to be attached to the basic agreement and made a part thereof. Among the remaining 20 articles, which cover their respective subjects without such reservations, the first 3, entitled respectively RECOGNITION, CHECK-OFF, and UNION SHOP, and the last 2, entitled respectively ALTERATION OF AGREEMENT and AMENDMENTS, AND TERMINATION, warrant some discussion at this point.¹⁴

The first article provides for the recognition of the International by the Respondent Company¹⁵ "as the sole and exclusive bargaining agency for all employees within the bargaining unit" specified therein, which is identical with the unit contained in the allegations of the two complaints, already set out hereinabove in footnote 3. This article on recognition also further specifies that the "Company will bargain collectively with the Union with respect to rates of

¹⁴ The titles of the remaining articles are: MANAGEMENT POWERS, NON-DISCRIMINATION, HOURS-OVERTIME, PAID HOLIDAYS, REPORTING AND CALL-IN TIME, NEW EMPLOYEES, VACATIONS, SHOP COMMITTEE, GRIEVANCE PROCEDURE, INSURANCE, BULLETIN BOARD, LEAVE OF ABSENCE, SAFETY, GENERAL, and NO STRIKE OR LOCKOUT.

¹⁵ While the terms actually used in the basic agreement are the Union and the Company, there can be no doubt as to their meaning in terms of the designations used herein for the respective parties.

pay, wages, hours and other conditions pertaining to employment for all of the employees in the unit."

The second article, entitled CHECK-OFF, provides, along with procedures for deducting, remitting, and recording, that the Respondent Company, upon receipt of "a signed authorization of the employee involved," shall deduct from his *last* paycheck each month "the initiation fee and dues payable by him" to the International, during the period provided for in said authorization.

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The next article, which has only one section, and which it is not contended contains any language which makes its provisions illegal *par se*, is set forth herewith verbatim:

ARTICLE III

UNION SHOP

Section 1. As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

Certain provisions of the last two articles of the basic agreement, to which we now turn, are significant, particularly in view of the fact that within about a year another agreement, dated August 30, 1955, was entered into, extending the unit coverage to include the Hillsdale plant.¹⁶

¹⁶ It would be well to keep in mind a contention as to this 1955 agreement, which is advanced in the brief of the Respondent Unions in the following language:

This agreement is neither an extension, a renewal nor a modification of the original contract and, indeed, involves different parties—the original agreement having been between the International and the Employer while the new agreement is between Local Lodge 1424 and the Employer.

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Article XXII provides that the basic agreement "shall be in full force and

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effect from August 10, 1954 to August 10, 1956 and shall automatically remain in full force from year to year thereafter," in the absence of written notice of desire to amend or modify given not less than 60 days prior to the agreement's expiration date. As to Article XXI, the provision here material specifies that no alteration, variation, waiver, or modification of the basic agreement is to be "binding upon the parties hereto unless such agreement is made and executed in writing between the parties hereto." Before leaving this basic agreement, it should be noted that only two changes were made in the typed provisions contained in its 11 pages. Both were made by hand, and were initiated by both Adams and Schwartzmiller. The first change involved a single word; Friday was changed to Wednesday, so that a phrase in the checkoff provision, as changed, called for deductions "from the paycheck received on the last Wednesday of the month." The other change made the "trial period" for new employees in Article X "sixty (60)" days instead of "ninety (90)" days.

We turn next to a 2-page supplement on wages, captioned EXHIBIT A, most of the second page of which is taken up with signatures. The first signature is that of Vice President Adams for the Respondent Company. Next follows, under the designation "INTERNATIONAL ASSOC. OF MACHINISTS," the signature of Schwartzmiller. Thereafter, under the designation "Temporary Bargaining Committee for Reading Plant" there appear 14 signatures of employees at the Reading plant, most of whom were at least mentioned at some point during the testimony, and two of whom, Myrtle Long and Lillie Shaffer, testified about the circumstances surrounding their

signing.¹⁷ The opening sentence of this wage supplement incorporated it fully in Article IX of the August 10 basic agreement. The specified wage rates were made effective as of August 10, and involved a 5 cents per hour wage increase for all employees, with a further 5 cents per hour increase in December 1954. The wage rates were to remain in effect until August 10, 1955, when "hourly wage rates only" could be reopened, upon 60 days written notice given prior

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thereto.¹⁸ Above the signatures on the second page of this wage supplement appears the date, "August 17th, 1954."

The remaining supplement on seniority, captioned EXHIBIT B, is also a 2-page section which is "Dated this 2nd day of Sept., 1954" on its second page above the signatures. The first signature appearing is again that of Vice President Adams for the Respondent Company. Under Adams' signature, there appears the designation "INTERNATIONAL ASSOCIATION OF MACHINISTS—A.F.L.," which is followed merely by six signatures, without any indication of the capacity of any of the individuals. However, all six of those signing are shown by the record to be employees at the Reading plant, and one of them, Iola Joice, testified as to the circumstances surrounding her signing of this supplement on seniority.¹⁹ The opening sentence of EXHIBIT B incorporates it fully as Article

¹⁷ Two other employees who also signed EXHIBIT A were called as witnesses upon other matters, but were not questioned about their signing the wage supplement. Those two were Imojine Sperbeck, the president of the Local Lodge at the time she was called under Rule 43 (b) by the General Counsel, and Florence Napier, who was called by the Respondent Unions on the fronting issues.

¹⁸ It will be recalled that the original term of the basic agreement was from August 10, 1954, to August 10, 1956.

¹⁹ This seniority supplement, like the one on wages, was also signed by Sperbeck and Napier, the two witnesses mentioned in an earlier footnote, but neither testified as to her signing EXHIBIT B.

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XII of the August 10 basic agreement. As to the provisions therein, it is sufficient to say that there are 11 sections which go into a good deal of detail in specifying principles and procedures as to a variety of matters pertaining to seniority. It should be noted that while EXHIBIT B contains only 2 pages, its margins are quite narrow. Unlike the other sections of the 1954 agreement which are double spaced, EXHIBIT B is single spaced and is, for instance, considerably longer and more involved than EXHIBIT A.

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We come now to questions about negotiating and signing the 1954 agreement, particularly the 11-page basic agreement which contains the unionshop and checkoff provisions. The General Counsel's brief would fix its execution as August 10, 1954, relying on the recital therein that it was "made and entered into" on that date, and apparently brushing aside as "vague, indefinite and self-contradictory" the extensive testimony of Leslie J. Westbrook, who, at the time he was called as a witness by the General Counsel under Rule 43 (b), was the Respondent Company's vice president and was responsible for its labor relations at the Reading plant, and who had been the plant manager of the Reading plant when the 1954 agreement was negotiated and signed. By contrast, counsel for the Respondent Company, devoting several pages of his brief to verbatim citations from Westbrook's testimony, argues that when Westbrook's testimony "is read completely, it is clear that no contract was signed until August 17, 1954," and that the August 10 date "was used by the parties solely for the purpose of making the terms of the contract *retroactive to August 10, 1954*, the date of the first meeting between Company and Union."

After having read through completely twice the approximately 125 pages of the record containing Westbrook's

testimony, and after having additionally studied quite intensively several parts of it in the light of the record as a whole, I am convinced, in view of my impression of Westbrook as a witness, that the facts material to determining the issues in this case fall somewhere between the above-stated positions of the General Counsel and the Respondent Company. There is certainly confusion and vagueness in several parts of Westbrook's testimony, and it would too greatly protract this Report to attempt to present a reasonably complete resume of his testimony. It should be noted, however, that all of Westbrook's testimony cited in the Respondent Company's brief, following its contention that no contract was signed until August 17, is from the first part of the

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examination of Westbrook by the General Counsel, some of it occurring before the 1954 agreement, with its various above-described parts, was furnished to the Respondent Company by the Respondent Unions for submission to the General Counsel, after which it was examined by Westbrook.²⁰ A careful appraisal of Westbrook's testimony as a whole shows that, during the early part of his testimony, when he was insisting that the agreement had not been signed until August 17, Westbrook was using the term "signed" to designate the point when there was "a contract signed by all parties."

²⁰ The pages of the transcript, from which the Respondent Company's brief at pages 8 to 14 cites testimony of Westbrook, range from page 105 to page 143. Westbrook's testimony as a whole begins on page 102 and runs to page 228. The General Counsel's original examination begins on page 102 and ends on page 177. The examination of Westbrook by the General Counsel after the entire 1954 agreement has been made available and briefly examined by Westbrook begins at page 126.

²¹ From the three above-described component parts of the entire 1954 agreement, it is obvious that no employees of the Respondent Company signed anything until the 14 employees who formed the Temporary Bargaining Committee signed the wage supplement, dated August 17, 1954.

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However, it was not until the sequence of developments with respect to the 1954 agreement began to be rounded out, during the testimony of Westbrook upon examination by counsel for the Respondent Company, that certain significant details emerged. In my opinion, it is this later and less defensively given testimony of Westbrook, after his recollection had obviously been refreshed,²² that assists us most in

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determining how the basic agreement was negotiated and signed. Relying largely on such parts of Westbrook's later testimony, as appear reliable in the light of all of Westbrook's testimony and the record as a whole, I make the following findings as to the negotiation of the basic agreement, and as to when Adams, who is no longer associated with the Respondent Company, signed it.

Westbrook first heard from the IAM when he received a letter on the stationery of the International, which was signed by Schwartzmiller as its representative. Said letter was dated Zanesville, Ohio, July 17, 1954; carried the subject designation "Union Recognition"; and was addressed to the Respondent Company at Reading, Michigan, "Attention: Plant Manager." The body of this brief letter

²² For instance, toward the end of his testimony, Westbrook answered a question by the General Counsel thus:

I will grant you it was hard to remember all of the dates this morning but after all day here you have time to think a little more than you had at that time.

²³ Despite the challenge of the General Counsel as to the authenticity of the letter, and the doubt cast upon it by its failure to bear the usual time-date stamp of the Respondent Company showing when it was received I accept Westbrook's consistently given testimony that he did receive this letter shortly after the date appearing thereon. It should be noted that the signature of Schwartzmiller on this letter, which is in evidence, appears to be the same as his signatures appearing on the 1954 basic agreement and on the wage supplement, which signatures none of the parties challenge, but that it differs from the signatures appearing on the return receipts for registered mail, which form part of the above rejected General Counsel's Exhibits 9 and 12.

(1387)

which indicates no readiness to establish the actual existence of the majority claimed therein, is herewith quoted in full:

Please be advised that the International Association of Machinists represent a majority of the "production and maintenance" employees of your company.

This is to request a meeting at your earliest convenience to discuss the terms of a collective bargaining agreement. I will be available for such meeting any-time the week of July 26, 1954. Please advise me of the time, date and place you wish to meet.

Looking forward to a mutually pleasant and amicable relationship, I am,

Upon receiving the foregoing letter, Westbrook telephoned the office of counsel for the Respondent Company and talked with Attorney Walter F.

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Probst, who had been giving him legal advice for many years. Westbrook told Probst about receiving the letter and what it stated, and he asked Probst for his advice. Probst stated that he "would advise recognizing them because he had been doing business with them in other plants,"²⁴ indicating that he had been "doing business" with the IAM in San Diego, California; Lancaster, Ohio; and Zanesville, Ohio. Probst told Westbrook that he had found in his dealings with the IAM that whenever a Company had "contested," the IAM had "won out." In essence, Probst also told Westbrook, among other things, that he had found the IAM "fair to work with"; that he was dealing with them at the time in Lancaster; and that

²⁴ Neither Probst nor his associate who represented the Respondent Company at the hearing, Gallucci, testified at the hearing, and all quotations in this section are from the testimony of Westbrook.

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he thought that they "could get along" and that they "might as well go ahead and have the meeting with them." Probst made no mention of a Board election during his conversation with Westbrook, but he did indicate that if they did not "go ahead and arrange for a meeting," they would "get beaten in the end." Probst told Westbrook to mail the letter to him.

Approximately a week after the foregoing telephone conversation which probably occurred about Monday, July 19, Adams and Westbrook went to Detroit where they met with Probst;²⁵ decided to recognize the International; and discussed some tentative contract provisions. A meeting with

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Schwartzmiller was also arranged for August 10 in Lancaster, Ohio. Before proceeding to the meeting of August 10, it should be noted that Westbrook's testimony clearly establishes that at no time after his receipt of Schwartzmiller's letter did Westbrook ask Schwartzmiller if he had any cards or raise any question about Schwartzmiller's claim of majority representation. Westbrook rather, "on the strength of what" Probst has told him, accepted the statement as to majority representation in Schwartzmiller's letter.

On Tuesday, August 10, Westbrook, accompanied by Probst and Gallucci, met with Schwartzmiller in Lancaster. Adams was not present at this meeting, which was devoted to negotiating an agreement. By the end of this meeting, the terms of the basic agreement had been reached, as this credited excerpt from Westbrook's testimony unmistakably shows:

We had our proposal, Mr. Schwartzmiller had his. We argued back and forth, cutting out, putting in, until we

²⁵ Probst's associate, Gallucci, was at that time in Lancaster.

arrived at an original contract . . . to be presented to the employees.

It is evident from all of Westbrook's testimony and the documentary evidence that when the meeting ended, wages and seniority provisions were still to be agreed upon, and that the basic agreement was to be typed up for final approval, subject to minor corrections, and signature. I am persuaded that Westbrook's understanding was that the agreement was eventually to be approved by the employees.

"It was right after the 10th, Mr. Probst typed up and mailed to" Westbrook the 11-page basic agreement. After Westbrook "received the contract," which was evidently "around the 12th or 13th,"²⁸ Vice President Adams affixed his signature to the basic agreement. After painstaking appraisal of Westbrook's testimony, I am convinced that Adams signed the

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11-page basic agreement, containing the union-security and checkoff provisions, some time before Schwartzmiller signed it. As Westbrook explained the matter, he understood that Adams' signature meant that "the contract was agreeable to the company" and that Adams was "only showing our faith in it by signing it first." Westbrook's testimony further indicates that, for similar reasons, Adams also was the first to sign the wage supplement.

While the matter is not without elements of doubt, I believe that Westbrook's testimony as a whole indicates that Schwartzmiller probably signed both the basic agreement and the wage supplement at the same meeting when the 14 employees who formed the Temporary Bargaining Committee signed the wage supplement, and further that when this signing took place Westbrook was given the impression

²⁸ The above-quoted phrase appears twice in Westbrook's testimony upon response to questions by counsel for the Respondent Company.

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that the employees had registered their approval of the provisions thereupon being signed.²⁷ But in any event, I am convinced that the preponderance of the credible evidence in the record as a whole establishes that, contrary to any such impression which Westbrook may have had, the Temporary Bargaining Committee actually signed the wage supplement about midafternoon on Tuesday, August 17, without any prior vote of approval of the contract provisions by any mass meeting of Reading plant employees. Further, I am similarly convinced that the two meetings of employees on their respective shifts which did take place, when contract provisions were read and discussed and when

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committeemen were elected for the respective shifts, did not take place until later on August 17, after all signatures had been affixed to both the basic agreement and to the wage supplement.²⁸ And finally, I am convinced and find, from my analysis of the extensive evidence as to these two meetings, that while Schwartzmiller read to the employees most,

²⁷ Admittedly Westbrook had no firsthand knowledge of any kind of ratification meeting of employees. While his testimony for the most part indicates that he was told that the employees approved the agreement at a "mass meeting," there are certain parts of Westbrook's testimony which suggest that he may rather have been told by Schwartzmiller that the employees on the Temporary Bargaining Committee had approved the provisions before signing.

²⁸ The first-shift meeting took place during the latter part of the afternoon, after the first shift was over. The second-shift meeting began about 11 p.m., some 2 hours before that shift would normally have concluded, but the employees punched out and were not paid for the time spent at the meeting. It appears that most of the employees on the respective shifts attended these two meetings, which were held in the

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American Legion Hall in Reading. I am convinced from all of the evidence that these two meetings each had similar purposes, to familiarize the employees with the agreement which had been signed, and to elect committeemen from the respective shifts.

if not all, of the essential provisions of the agreement, there was no vote taken at either meetings to approve any of said provisions.²⁹

Before turning to the activities of Schwartzmiller at Reading on August 16 and 17, which I am convinced occurred after Schwartzmiller knew that Adams had signed the basic agreement, it would be well to note that the supplement on seniority, EXHIBIT B, was eventually signed on September 2, 1954, after the numerous provisions therein had been agreed to during several bargaining sessions. The clear and convincing testimony of Lola Joice, who signed this seniority supplement, shows that these negotiations started on August 18, the day after Joice was elected a committeewoman for the second shift during the meeting of the second shift employees on the night of August 17, and that Joice signed EXHIBIT B on September 2 because after several meetings "Management and the committee . . .

²⁹ The testimony as to the second-shift meeting is particularly extensive and is also confused in several respects, most of them minor. In any event, some of the uncertain details of this night meeting are not material to a determination of the issues herein. Further, the evidence as a whole leaves no doubt that Schwartzmiller, despite some limitations as to the closing time of the hall, read, at least all of the essential provisions of the agreement to second-shift employees, as he undoubtedly had done at the earlier meeting of first-shift employees. Further, the evidence as to the second-shift meeting leaves no doubt that the vote taken at that meeting was the election of committeemen, and that no vote was taken to approve the agreement. As to the first-shift meeting, while the testimony uniformly shows the election of committeemen, there is also testimony by Sperbeck that the meeting unanimously approved the agreement by "voice vote," and that there were "no opposers." While it seems evident that no one spoke out in disagreement, as Schwartzmiller read the provisions of the agreement during the first-shift meeting, I am convinced, by consistent and credibly given testimony of Dorothy Sables and Frances Peters as to whether there was any kind of vote taken on the agreement, that no vote of any kind was in fact taken at the first-shift meeting pertaining to approval of provisions of the agreement. Particularly convincing in this respect was Peters' explanation, on cross-examination by counsel for the Respondent Unions, that she was positive that no vote had been taken to approve the agreement because of the fact that after she had thought it over she had wondered why there had not been such a vote.

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had agreed on it." It should be noted that after her election as committeewoman on the night of August 17, Schwartzmiller told Joice that she "was supposed to go in there the next day" to the negotiations, and that the temporary committee "wasn't to go in there no more."³⁰ From all of the circumstances, I am

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convinced that the seniority provisions were the only ones in the 1954 agreement, as supplemented, which the elected committeemen played any part in negotiating.

C. *The advent of the IAM among the employees of the Reading plant and developments thereafter*

In contrast to the UAW, which the record shows had been active among the Reading plant employees for a month or more prior to August 16, 1954,³¹ there is no evidence in the record showing any activity on the part of the IAM prior to Schwartzmiller's appearance at the Reading plant on Monday, August 16. To the contrary, witness after witness

³⁰ Neither Joice nor Clayton Mundy, the other committeeman for the second shift elected at the late meeting on August 17, and who also signed the seniority supplement, had been members of the temporary committee which had signed the wage supplement earlier on August 17.

³¹ By the time the IAM's agreement had become known, 3 meetings of those interested in the UAW had been held at the Reading home of Mary Carter, then one of the employees, and a number of employees had signed cards bearing the caption "AUTHORIZATION TO UAW-CIO." These cards, of which between 30 and 40 eventually were signed, according to Saloman, authorized the UAW to serve as collective bargaining representative and were to be used, according to the legend across the bottom, "in support of the demand of UAW-CIO for recognition or for an NLRB election." It is noteworthy that no reference whatsoever to Local 701 appears on the sample card which is in evidence. It should also be noted that there was a meeting held in the VFW hall in Reading, but the date of the meeting is uncertain. According to Carter, the attendance at the meetings at her home, of which there were 3 prior to, and 1 after they had learned of the IAM agreement, ran from around 7 or 8 to "as high as twenty at one time."

testified convincingly and unequivocally as to the absence, so far as she had any knowledge, of any kind of activity on behalf of the IAM prior to either August 16 or August 17, depending on which of those 2 days it was that she first learned of the IAM's interest in the plant. To this negative type of testimony, which is so vigorously attacked by the Respondents, we now turn.

There were 13 women witnesses called by the General Counsel who gave credible testimony of the preceding type, which was not shaken on cross-examination. These witnesses were Mary E. Watkins, Ruth Moses, Mildred Southwell, Beverly Hadley, Edith Wolford, Myrtle Long, Margaret Hatfield, Lillie Shaffer, Dorothy Sarles, Frances Peters, Joyce Shaffer, Iola Joice, and Maryalice Mead.³² In essence, this testimony, which varied from witness to witness, was to the general effect that, prior to learning about the IAM on either August 16 or 17, these witnesses had never been approached by any individual on behalf of the IAM; had never signed any kind of application or authorization pertaining to the IAM; had had no knowledge of discussions among employees at the plant with respect to the IAM; and had not seen any kind of IAM posters or circulars around the plant.

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In addition to the above named 13 employees, whose composite testimony presents the picture of absence of IAM activity set out in the preceding paragraph, the parties stipulated that if 13 other named employees, who were under subpoena as witnesses for the General Counsel,³³

³² In addition, Mary Carter, who had been laid off several days before August 16, testified as to the absence of IAM activity during the period of her employment.

³³ The names of said 13 employees are as follows: James Hayes, LaJeanne Hinkle, Pat Carpenter, Dorothy Slocum, Ruth Young, Danna Newbauer, Ester May, Caroline Pfeifle, Evelyn Bradshaw, Barbara Rogers, Violet Kelley, Paul Parker, and Darlene Sharp.

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were called to testify, they would testify in substantially the same manner as Joyce Shaffer, one of the 13 witnesses named in the preceding paragraph. In view of this stipulation as to what 13 additional employees would have testified, the gist of the material testimony of Joyce Shaffer is herewith set out.

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According to Shaffer, "the first time" she knew that a union had come into the plant was when Donna Munger told her about it the day "the girls came out of the office," which date the evidence as a whole establishes as Monday, August 16, 1954.³⁴ It was Shaffer's unimpeached and credited testimony that she had never been approached by any representative of the IAM or any employee on behalf of the IAM prior thereto; that she had not seen any posters, literature, or circulars of the IAM prior thereto; and that she had joined the IAM "a month or two after" it had come in, because she understood that she "had to or else lose [her] job."³⁵

We turn now to a consideration of the 14-member Temporary Bargaining Committee. Fragmentary and confused as it is in some respects, the composite picture which I get from all of the evidence, as to such organizational activities as the IAM conducted among employees at the Reading plant, indicates that it was on Monday, August 16, that

³⁴ As appears more fully below, Donna Munger was one of the five girls from the second shift who were called into the office shortly after the beginning of the second shift on August 16 for a meeting with Schwartzmiller. A number of the other earlier-named 13 women witnesses also testified that they first learned of the IAM from one or more of the girls called into the office on August 16.

³⁵ It should be noted that many of the above named 13 women employees who testified gave similar testimony to that of Joyce Shaffer about having joined the IAM because they understood that they had to do so. Some of those witnesses pointed out that they had been told at meetings by Schwartzmiller about the union shop provision of the agreement.

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this temporary committee probably was selected. In any event, there is direct testimony about a meeting between Schwartzmiller and five women on this temporary committee who worked on the second shift. Further, there is some information as to 5 of the 9 remaining members of this committee, who apparently were from the first shift, upon which it appears that about two-thirds of the employees worked, the remaining employees being on the second shift.³⁶ Because the evidence as to them is clear in the record, we consider first the five second-shift women who signed the wage supplement, even though they may have been selected later than the first-shift employees who were members of the Temporary Bargaining Committee.

Not long after 5 o'clock on the afternoon of August 16, 1954, about an hour after the beginning of the second shift, five "girls" were called from the plant into Westbrook's office. When these five employees had assembled in an aisle outside of the office, Eugene McFann, who was then

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and had been, since November 1953, the plant superintendent of the Reading plant, and who has been its plant manager since July 1955, told them, "Don't be afraid girls, you're not going to get bawled out." These five second shift employees, who thereupon went into Westbrook's office without punching out their time cards, were Donna Munger, Velma Rooks, Jean Edinger, Lillie Shaffer, and Myrtle Long, the last two of whom testified as to what

³⁶ Employee witnesses estimated the number of employees on the first shift at about 100 and on the second shift at about 50. Figures from the records of the Respondent Company show that on August 10, 1954, there were 148 employees altogether in the bargaining unit covered by the agreement. There were 2 layoffs thereafter during August 1954. The first layoff was on August 11, and involved approximately 20 employees. The second layoff took place on August 17, when 21 employees were laid off.

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occurred on that occasion.³⁷ It is upon my analysis of the testimony of

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Lillie Shaffer and Myrtle Long,³⁸ whose names also appear hereinabove, among those of the 13 women witnesses who testified as to their lack of previous knowledge of the IAM, that I base the findings which follow as to what took place when Schwartzmiller met, for perhaps 45 minutes to an hour, with these 5 women in Westbrook's office.

When the above named five "girls" came into his office, Westbrook introduced Schwartzmiller as being from the IAM, and left the employees along in the office with Schwartzmiller.³⁹ Schwartzmiller thereupon explained to the employees that the IAM had an agreement with the Respondent Company which would be to the advantage of the employees. Schwartzmiller mentioned their "getting a raise"; said that there were parts of the agreement which "could be changed or altered in the future"; and spent most of the time reading parts of the contract.⁴⁰ Before

³⁷ Munger, Rooks, and Edinger, whose names, along with those of Shaffer and Long, appear on the wage supplement dated August 17, were not called as witnesses at any time during the hearing, and McFann did not testify as to this incident. Further, it is my considered judgment that testimony which Westbrook gave, about a group of 10 or 12 employees being called into his office from a list which Schwartzmiller handed to McFann, pertains to calling in the Temporary Bargaining Committee to sign the wage supplement on August 17.

³⁸ McFann had personally gone to long to tell her to go to the office.

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³⁹ Despite some uncertainty in the testimony, I am convinced that Westbrook left after merely introducing Schwartzmiller.

⁴⁰ Whether she got the date, August 10, from Schwartzmiller's reading the contract, or from Schwartzmiller's discussion of it, I have no doubt from Long's testimony that she left the meeting with that date associated in her mind with the agreement. Further, it appears from Long's testimony that Schwartzmiller, sometime before the meeting ended, mentioned to the employees that he wanted them later to sign some papers connected with the agreement.

the meeting ended, Shaffer told the five employees that as long as they were in there, they "might just as well be among the first to sign the cards." Thereupon, "membership cards were passed out by Schwartzmiller" to the five employees and, as Long credibly testified, "We all signed them, all five of us girls."⁴¹

It is obvious from various bits of testimony which need not be detailed that when the five women returned to the plant, word spread among their fellow employees about their meeting with Schwartzmiller. In fact, not long afterwards, "quite a few girls gathered around" Plant Superintendent McFann at a point "between the time clock and the office door" and asked him how the five who had gone into the office had been selected. McFann stated that the girls had been "chosen at random," explaining that he had "gone through the cards and tried to get a girl from each department."⁴²

⁴¹ The quotations in the above paragraph are all taken from credited testimony of Long, which was consistent on the matters above found with similar testimony of Shaffer, insofar as Shaffer recalled what occurred at the August 16 meeting in Westbrook's office. For instance, Lillie Shaffer credibly testified, with respect to their signing IAM cards in the office on August 16, that Schwartzmiller had said that "somebody had to be first, and it might as well be us; We had to join anyway." As to whether or not there was any conversation between Schwartzmiller and "any of the other five present with respect to their signing the cards," Long testified, "I can't remember any of us saying anything when we took the cards and signed them." As to why Long, who was on that occasion for the first time meeting Schwartzmiller and learning about the IAM, signed an application, is of more than passing interest. Long explained why she signed in this forthrightly given answer, which must be evaluated in the light of the provisions of the basic agreement which Adams had already signed, and which Schwartzmiller had already explained at the meeting:

Well, I signed because I had no other choice. They said the agreement had been signed on the tenth and as long as it was in and I intended to work there, I might just as well sign too.

⁴² The above findings as to McFann's explanation are made upon essentially consistent, uncontradicted, and credited testimony of Long, from which the quoted material has been taken. Long also testified convincingly that before she had been sent into the office, she had seen McFann at the time clock "going up and down the time cards."

From the above findings and the record as a whole, it is evident and I find that the 5 second-shift employees on the 14-member Temporary Bargaining Committee were selected at random to meet Schwartzmiller in Westbrook's office the day before they signed the wage supplement; that the 5 women were sent to Westbrook's office late on the afternoon of August 16 when at least 2 of them heard for the first time about the IAM's interest in the plant; and that all 5 of the women on that occasion signed IAM applications after Schwartzmiller had explained the terms of the agreement which the Respondent Company had already signed and which required membership in the IAM, and after Schwartzmiller had also told them that they might as well be among the first to sign IAM application cards. We turn now to such fragmentary information as the record provides about the other 9 employees who signed the wage supplement as members of the Temporary Bargaining Committee.

As to Ruth Young, whose signature as a member of the Temporary Bargaining Committee is the third to appear on the wage supplement, and Paul Parker, whose signature is the last of the 14 employees to appear thereon, we know from the above discussed stipulation that if they had been called as witnesses their testimony would have been substantially the same as that of Joyce Shaffer. Hence we know that it was on August 16 that both Young and Parker first learned that the IAM had come into the plant.⁴¹

⁴¹ The extent to which Schwartzmiller may have participated with McFar, in this random selection is not revealed by the record and is less significant, in my opinion, than such random selection of employees, who had not even evidenced any prior interest in the IAM, so far as the record shows.

⁴² Parker was later elected a committeeman from the first shift at the meeting of first-shift employees, which was held shortly after the wage supplement was signed, and he thereafter signed EXHIBIT B also.

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As to Florence Napier, whose signature is the second one among the 14 on the Temporary Bargaining Committee, it is evident from credited and uncontradicted testimony of Mildred Southwell an employee on the first shift, that on August 17 Napier told her (Southwell) that the first time she (Napier) had heard of the IAM was when she (Napier) had been called into the office the day before. In explanation of her testimony that on August 17; on their way to work, Napier had told her that "we had a union in the shop."

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Southwell testified:

I said, "Well, what union is that?" She said it was the International Association of Machinists and I said, "I never heard of them before," and she told me that she had been called into the office the day before and it was the first time she had heard of it.

As to Laura Puckett, whose signature is the fifth of the committee on the wage supplement, the record merely shows that the subsequently was elected president at the mass meeting of employees from both shifts held the latter part of August.

Imojine Sperbeck, the tenth member of the committee to sign, testified that she was elected president of the Local Lodge "the first part of January, 1955." She was still president of the Local Lodge at the time she was called as a witness by the General Counsel under Rule 43 (b).⁶

⁶ As to just when the Local Lodge itself was actually founded, the record is ambiguous, but it would appear that the Local Lodge had come into the picture at the Reading plant prior to Sperbeck's being elected president thereof in January 1955, even if Puckett had been elected president of the members of the IAM at the Reading plant before the Local Lodge was actually installed there. In any event, despite the failure of the Local Lodge to appear (Continued)

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Sperbeck, a first-shift employee, was elected a committee-woman from

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her shift at the meeting of first-shift employees held on the afternoon of August 17, shortly after she and the other members of the committee had signed the wage supplement. According to Sperbeck's own testimony, she became a member of the IAM "about the last part of August," and it was after "there was a signed contract in the plant" that Sperbeck "signed a membership application." Sperbeck also testified that she was one of a group called into the office on August 16; that she did not see anyone sign a membership card on that occasion; that if anyone had signed, she "would have seen it"; and that so far as she knew "there were no membership cards signed."

In view of Sperbeck's testimony, the group which Sperbeck went into the office with on August 16 must have been a first-shift group which probably included some, if not all, of the members of the Temporary Bargaining Committee other than the five second-shift members. Hence it seems possible that the five second-shift women who were called into the office on August 16 may have been the first employees to sign IAM membership applications and may also have been the only members of the committee who had signed such applications at the time the Temporary Bargaining Committee signed the wage supplement on August 17. But be that as it may, the foregoing facts concerning the Temporary Bargaining Committee are significant in determining whether the IAM was the duly designated bargaining agent.

One could go into greater detail as to when and how various employees first learned of the IAM, or first saw

45. (Continued) as signing any of the parts of the 1954 agreement, there is no contention that the Local Lodge was not in the picture within 6 months prior to the filing of the charge against the Respondent Unions.

Schwartzmiller, or first signed IAM cards; as to what probably did or did not take place at various meetings, particularly the second-shift meeting on the night of August 17; and as to various activities and conversations of Schwartzmiller on August 16 and 17.⁴⁶ But in my opinion, with certain exceptions to which we next turn, most of such details, all of which have been duly weighed, but which

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in my judgment fall short of establishing that the Respondent Unions were dominated or sponsored by the Respondent Company, would serve only to piece out various aspects of the general picture which have already been sufficiently indicated. Hence, we leave undiscussed numerous details, about the significance of which there can be honest differences of opinion.

We come now to one remaining major type of evidence bearing upon lack of majority. This pertains to several occasions during which, as revealed by uncontradicted, reasonably consistent, and credited testimony of various witnesses named subsequently herein, Schwartzmiller was confronted with essentially the question of how the IAM had got into the Reading plant.

The first of these occasions occurred in the plant on the evening of August 16 when Schwartzmiller talked individually to one of the employees interested in the UAW, Ruth Moses. Schwartzmiller approached Moses at her machine and introduced himself as a representative of the

⁴⁶ For instance, first-shift employee Saries, whose testimony has previously been cited, testified credibly that during the lunch break on the first shift at about 2:30 p.m. on August 17, Schwartzmiller came into "the lunch part of the factory" where the employees customarily assembled at that time, and started a conversation during which "some of the employees asked questions." Among other things, Schwartzmiller according to Saries, told the employees they "had received a nickel increase" which would be retroactive to August 16 and also said, "You girls now have a union and have had it as of August 16th."

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IAM who was there to help set up a union that they could "work under." Schwartzmiller said that he understood that Moses was not exactly pleased. Moses, who had just shortly before learned for the first time of the IAM after the five second-shift girls had returned from their meeting with Schwartzmiller in Westbrook's office, said that "it was merely the way they had come in" which

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she questioned. During their conversation, Schwartzmiller told Moses that the IAM "had a contract," and Moses asked Schwartzmiller "how they could have a contract without the girls' permission." While Moses apparently felt that she "never did get a straight answer" to her question, I have no doubt, from her essentially consistent and credibly given testimony on direct and cross-examination, that the substance of the explanation which Schwartzmiller made was that the IAM had been organizing or had just finished organizing "another branch of the company";⁴⁷ that "the company had agreed to let "the IAM come into the Reading plant; and that the IAM:

... came immediately, rather than try to organize in the usual way, because they figured they would come while the company was in the mood.

As to this occasion, as is true of each of the three other occasions involving Schwartzmiller which are substantially discussed herein, it is particularly significant that there is no indication that Schwartzmiller made any claim whatsoever as to having secured adherence to the IAM from the employees covered by its agreement.

⁴⁷ While Moses evidently remembered Schwartzmiller as saying "another branch of the company," it seems possible, from testimony subsequently quoted herein, that Schwartzmiller, whether he made himself clear to Moses or not, may actually have been referring rather to another company which was closely interrelated in its economic activity with the Respondent Company.

The second of these occasions took place outside of the American Legion Hall in Reading. It involved Schwartzmiller and three officers and a steward of Local 701, which has its office in Hillsdale. The three officers, Vice President Ray Zider, Recording Secretary William Nichols, and Financial Secretary William Burger, had been sent from Hillsdale to Reading by President Salomon and Robert McClain, an international organizer for the UAW, to find out what was going on at the Reading plant. The foregoing three officers and Schwartzmiller were joined during the latter part of their conversation by Steward Kenneth Carter, whose wife

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was active in the UAW organizing campaign, and at whose Reading home the above-mentioned UAW meetings were being held. I am satisfied, from my analysis of the testimony of the three witnesses who testified as to this incident, Nichols, Burger, and Carter, that this discussion followed substantially the lines set out below, lasted no more than half an hour, and took place the latter part of the afternoon of August 17, 1954.*

The three officers of Local 701 introduced themselves to Schwartzmiller as he stood on the sidewalk, after coming out of the meeting hall. They asked Schwartzmiller what was going on and he told them that he had a contract with the Bryan Manufacturing Company and that they had just had a meeting. Schwartzmiller was then asked if he did not know that there was a "non-raiding agreement" between their organizations and Berger asked Schwartzmiller how

* While there is no testimony as to the exact date, the brief of the Respondent Unions places this incident on August 17, and I accept this as correct, in view of the general sequence of events, the probabilities, and the convincingly given testimony of Burger that the discussion took place "in the middle of August," after a meeting of employees at the American Legion Hall in Reading. It has been found above that such a meeting of employees did take place after the first shift on the afternoon of August 17.

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he "got away with it."⁵⁰ Schwartzmiller replied, in effect, that it depended on who you knew and that if you can get away with it you just get away with it. Someone in the group accused Schwartzmiller of coming in the back door, or of making a back-door deal,

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and Schwartzmiller did not deny or confirm it. During the discussion, which obviously became heated, Schwartzmiller was asked if he knew that there was a correct way and an incorrect way of organizing a plant. Eventually the argument "sort of cooled down," and one of the group asked Schwartzmiller, who had an Ohio license on his car, where he was from. Schwartzmiller said that he was from Ohio and had just negotiated a contract for what Nichols testified he understood was "another part of this company" at Mansfield, Ohio.⁵⁰ In any event, the incident terminated when the three officers of Local 701 returned to Hillsdale, after saying, "The two International unions will have to fight it out."

The third occasion when Schwartzmiller was confronted with an inquiry as to how the IAM had got into the Reading plant occurred not many hours after the above discussion, during the meeting in the American Legion Hall of the second-shift employees on the night of August 17. During

It was apparently at about this point that Carter joined the group.

⁵⁰ On cross-examination, Nichols testified that while he was not sure, he was "pretty near positive" that Schwartzmiller had said that he had been organizing another branch of this company in Mansfield, Ohio. Carter testified that Schwartzmiller said that he "had been organizing some plant in Ohio" but was not able to recall what the plant was.

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Whatever may have been the plant in Ohio to which Schwartzmiller made reference on at least three of the occasions discussed herein, it is significant that his explanation pertained to having been organizing some other plant, rather than to having organized the Reading plant.

the course of that night meeting, second-shift employee Moses, whose discussion with Schwartzmiller the preceding evening at the plant has already been presented, queried Schwartzmiller publicly as to how the IAM had got into the plant and secured its contract. Just how Moses' question was worded, and just how fully Schwartzmiller actually did reply thereto, is left in doubt by the several varying versions of this incident given by a number of witnesses.⁵¹ But in my opinion, the weight of the evidence leaves no doubt that Schwartzmiller at least stated that he had been warned that an attempt would be made to break up the meeting, and that whatever other

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explanation, if any, Schwartzmiller may have made, it did

⁵¹ Answers given during their direct examination by four of several witnesses for the General Counsel, summarized largely in the words of the witnesses themselves, will serve to illustrate the divergence in the testimony on this point. For instance, Maryalice Mead testified as follows:

Mrs. Moses asked Mr. Schwartzmiller how he came about to be in there, and he said, "Come in through the company," and that everything was legal. We didn't have a thing to worry about; and he ruled her out of order and said he had understood there would be some people in the crowd that were going to try to split up this meeting, and he didn't want to have any trouble.

By contrast, Beverly Hall testified that the conversation between Schwartzmiller and Moses was "very clear" in her mind and that all that Schwartzmiller had replied to Moses' question as to "who asked the IAM to represent us" was, "I was told there were going to be people here that would try to break up this meeting." On the other hand, Edith Wolford testified that her best memory of what Schwartzmiller had said, in answer to Moses' question as to "how he was able to come and sign a contract without us knowing about it" was, "You don't pass up a good opportunity when you see one or when you have one." Margaret Hatfield testified that her best memory of what Schwartzmiller replied to Moses' question as to "who asked him to represent us" was that Schwartzmiller had "heard someone was going to be sent there to interrupt the meeting."

not include any claim that the employees had designated the IAM to bargain for them.⁵²

The last of the occasions involving Schwartzmiller and the question of how the IAM got into the plant occurred during the summer of 1955, almost a year after the foregoing incidents, and after a number of employees who were dissatisfied had held at least some of the meetings which are discussed in the subsequent section of this Report which deals with the fronting issues. My subsequent findings as to this 1955 incident, which occurred about June or July, during a meeting of the Executive Committee of the Local Lodge, are based upon my careful appraisal of uncontradicted testimony of Everett Hubbell, who started working at the Reading plant on November 1, 1954, joined the Local Lodge about December 15, and was elected a committeeman of the Local Lodge in February 1955. Following his election as a committeeman, Hubbell became a member of the Executive Committee of the Local Lodge and attended its meetings, as well as the general membership meetings. Hubbell also was one of the six employees who signed the subsequently discussed agreement of August 30, 1955, for the Local Lodge. Hubbell admittedly also attended some of the meetings of dissatisfied employees which were conducted in the spring and summer of 1955, and this fact has been duly considered in weighing his testimony.

On the whole, I am convinced that Hubbell was an essen-

⁵² It is difficult, incidentally, to tell from Moses' testimony just how much of Schwartzmiller's explanation the evening before to her individually Moses believed Schwartzmiller reiterated publicly at the August 17 meeting. But the testimony of several other witnesses, some of which has been quoted in the immediately preceding footnote, some of Moses' own testimony, and that inherent probabilities, lead me to believe that Schwartzmiller's explanation on August 17 was brief, and essentially avoided Moses' question by referring to his having been warned about someone causing trouble or attempting to breakup the meeting. In any event, all versions of this exchange between Moses and Schwartzmiller at the second-shift meeting are devoid of any indication that Schwartzmiller made any claim of majority.

tially truthful witness, although admittedly uncertain as to dates and possibly confused as to whether or not there had been more than one occasion upon which Schwartzmiller made remarks similar to those which Hubbell attributed to him at a meeting of the Executive Committee, which is the only occasion upon which I am relying. Incidentally, from Hubbell's direct examination it would appear that Carl Cederquist, the representative of the International who signed the agreement dated August 30, 1955, and who had by

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that time also become active in the affairs of the IAM at the Reading plant, may have gone "through the same procedure" in trying to "get across" the idea that the IAM "came in legal." However, I am not satisfied, from Hubbell's testimony as a whole, just what Cederquist may have said. In any event, whatever Cederquist may have said in the summer of 1955, the record does not show any participation on Cederquist's part on behalf of the IAM at the time it came into the plant in the summer of 1954. Hence, I am giving no weight to Hubbell's testimony regarding remarks attributed to Cederquist. Similarly, I am giving no weight to Hubbell's vague and general testimony that Schwartzmiller made similar remarks "several times," one of which was at a "regular union meeting" in the American Legion Hall in June or July 1955.⁵³

It is evident from Hubbell's testimony, and the record as a whole, that there was still discussion among employees during the spring and summer of 1955 as to whether the IAM had come into the plant in the

⁵³ However, it should be noted that if Schwartzmiller did make some such explanation to a general membership meeting in the American Legion Hall in the summer of 1955, as I find hereinbelow that he made to the Executive Committee, it might explain some of the confusion of witnesses (indicated above) as to what Schwartzmiller said at the meeting in the same hall on the night of August 17, 1954.

right way. Further, I have no doubt, from credited testimony of Hubbell, that at one meeting, at least, of the Executive Board during this period, Schwartzmiller devoted considerable time to explaining to the members of the Executive Board,³⁴ how the IAM had come into the plant legally and in a "rightful way." Schwartzmiller's explanation to the Executive Committee, about June or July 1955, was essentially that the IAM had been on a strike at Essex Wire, a company in Lancaster, Ohio; that they had had that company, which was "connected" with the Respondent Company, "over a barrel"; and that they had got the contract at the Reading plant because "they told them that they would have to let them come in up here." While it is not clear from Hubbell's testimony whether Schwartzmiller explained just who had been told that the price of settling a "strike or something" at Essex Wire had been an IAM contract for the Respondent Company's Reading plant, I am satisfied from Hubbell's testimony that such an explanation, involving Essex Wire having been "over a barrel," was the core of what Schwartzmiller told the Executive Committee of the Local Lodge, on at least one occasion during June or July 1955, as to how the IAM had got its Reading plant contract.³⁵

Before turning to what in my opinion is a pivotal question

³⁴ Hubbell named a substantial number of the members who were also present among those named being Napier and Sperbeck, who have already been identified herein.

³⁵ While the record warrants no finding as to what actual relationships, if any, may have existed between "Essex Wire" and the Respondent Company during July and August 1954, it has been noted above that there were two layoffs during that period at the Reading plant, one on August 11 and the other August 17. Furthermore, it seems reasonable that Schwartzmiller would have given a more detailed and forthright explanation to the Executive Committee of the Local Lodge after the problem had been complicating matters in the minds of at least some of the employees for almost a year, than he had given to Ruth Moses or to the officers of Local 701 during August 1954.

in this case, namely whether or not the General made *prima facie* showing that the Respondent Unions did not represent the employees covered therein when the 1954 agreement was entered into, consideration should be given to flatly contradictory testimony as to what was said during a conversation on the evening of August 17, 1954, between employee Ruth Moses and Eugene McFann, who was then the plant superintendent. There is no doubt that before Moses, who was one of the 21 employees involved in the August 17 layoff, left the plant that night to attend the late meeting of second shift employees, she, like several other employees also being laid off on August 17, discussed her layoff with McFann. The flat conflict in the testimony of Moses and McFann comes on the question of whether anything

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was said on that occasion pertaining to any union.

Moses testified on direct examination that, in addition to discussing her layoff with McFann, she had questioned McFann "in some way" which she could not remember exactly "as to where the union came from or how," and that McFann had told her that "the company had allowed them to come in, and what a benefit it would be for the girls." The foregoing version of Moses on direct examination was not shaken on cross-examination by counsel for the Respondent Company, and Moses insisted that it was "not a fact" that she had not "even mentioned the Union to Mr. McFann that night." On the other hand, when called as a witness by the Respondent Company, McFann testified that his conversation of August 17 with Moses, like several similar conversations with other employees being laid off that day, pertained to "how they would be called back, if they would be called back or rehired." Further, McFann denied unequivocally that "any

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part of that conversation" which he had had with Moses "pertained in any way to unions or union activities." The General Counsel did not cross-examine McFann on the foregoing testimony.

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Neither McFann nor Moses, both of whom were quite obviously interested witnesses, impressed me as the type of individual who would deliberately fabricate testimony. On the other hand, both McFann and Moses were, at times, during their fairly extensive examinations, which covered a number of different matters, confused, inconsistent, and on the defensive. But this is not too surprising, especially in view of the tensions involved in this case, and the vigorous nature of some of the examinations during this closely litigated hearing.

On the whole, Moses' testimony about her conversation with McFann on August 17 was less convincingly detailed than was some of her other testimony, such as that pertaining to her conversation with Schwartzmiller the preceding evening, August 16, 1954. By contrast, McFann's denial that the conversation here under consideration pertained in any way to unions was more convincing than certain parts of his testimony concerning the negotiation of the 1955 agreement. Further, even if McFann, who, as has been found above, had the day before at least assisted in picking a representative group of second-shift "girls" to meet with Schwartzmiller in Westbrook's office,³⁰ actually did say something to Moses on August 17 to the effect that "the company had allowed [the IAM] to come in," such a remark becomes relatively less consequential, in view of Westbrook's above-related explanation of how the Respondent Company's attorney had convinced him that the IAM's claim of majority representation should not be challenged.

³⁰ The Respondent Company did not question McFann as to that matter when it called him as a witness.

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In any event, weighing all credibility factors, the General Counsel has not carried his burden of establishing that this conversation between McFann and Moses included anything pertaining to unions.⁵⁷

D. Concluding findings as to lack of majority and assistance with respect to the 1954 agreement

So much of what has been said is pertinent to the concluding.

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findings in this section of the Report that no attempt will be made to summarize. We will turn rather to our first major problem, whether or not the General Counsel's evidence, regardless of other factors, establishes a *prima facie* case as to the IAM's lack of majority with respect to the 1954 agreement.

The briefs of the Respondent Unions and of the Respondent Company strongly contend that the General Counsel failed to establish a *prima facie* case as to lack of majority. Both briefs stress the failure of the General Counsel, having chosen not to enforce his *subpoenas duces tecum* for the records of the Respondent Unions,⁵⁸ to call a majority of the employees in the unit as witnesses to show lack of adherence to the IAM. The position of the Respondent Company in its brief is essentially that the testimony of "a negligible minority of employees out of a total of approximately 156, is sufficient only to prove the desires of that negligible minority," and that under all of the circumstances it was "absolutely incumbent upon the General Counsel to prove that a majority of the employees favored some other Union, or no Union at all." The gist of the position taken in their brief by the Respondent Unions is

⁵⁷ This is not to say, however, that I subscribe generally to the position taken in the brief of the Respondent Company on the credibility of Moses as a witness.

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that the General Counsel did not meet his burden of proving "the essential element" of the complaint, the "non-majority status" of the IAM, because the General Counsel "neglected and failed to produce the majority of the employees employed" at the Reading plant in August 1954, and that to meet this burden, the General Counsel, who offered no reason for his failure to do so, "would have had to produce 79 of the available employees."

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It should be noted that the above similar positions of the Respondents are premised on the figure of 156 employees. However, the figure actually material to the foregoing contentions is 148; the number of employees in the unit on August 10, before the layoffs of August 11 and 17, respectively, had reduced it by some 20 and 21 employees. Obviously it is the majority of the employees in the unit which is relevant, rather than the number of employees on the payroll as a whole. But since the record shows no reason why, in considering majority questions at any time from August 10 to August 17, laid-off employees otherwise in the unit should be excluded, the approximately 41 laid-off employees should be considered in discussing majority. Finally, it is my opinion that, in any event, the crucial date with respect to majority is August 10, 1954, because on that date the Respondent Company, having recognized the IAM and bargained with it, agreed to the provisions of the basic contract, which gave the IAM its union-security and checkoff benefits. Within a few days thereafter, probably on August 12 or 13, the basic agreement was signed by Vice President

²⁸ The position of the Respondent Company as to the failure of the General Counsel to enforce said subpoenas has been noted in an earlier section of this Report.

²⁹ The record indicates that at least some second-shift employees laid off on August 17 attended the night meeting of August 17 and participated therein.

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Adams. Thereafter, during his organizational activities at the plant on August 16 and 17, and in the meetings conducted on August 17 in the American Legion Hall, as more fully detailed in facts above found, Schwartzmiller made it known to the employees that the IAM had a signed agreement which included union-security and checkoff provisions. Certainly any majority adherence which the IAM might have secured after the Respondent Company had agreed to the union-security and checkoff provisions in the basic contract cannot be considered to be an unassisted majority. Furthermore, since the facts above found show that there was no ratification vote concerning the agreement taken at either of the meetings of the employees on their respective shifts on August 17, there is no factual basis for implying acceptance of the IAM by a majority of the employees in the unit, by virtue of any ratification of the agreement by the employees, either before or after Schwartzmiller and the Temporary Bargaining Committee signed it.⁶⁰

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We thus come more specifically to a modified form of our original question about the General Counsel's *prima facie* case as to lack of majority. Restated in terms of the case at bar, this question becomes essentially whether or not the facts established by the credited evidence adduced by the General Counsel, as summarized in major part in the two preceding sections of this Report, warrant the inference that less than a majority of the employees in the unit had indicated their adherence to the IAM by August 10. In my judgment, when all of the factors in the General Counsel's affirmative case are considered in the light of usual labor relations experience and procedures, the reasonable answer

⁶⁰ Compare *Robbie Shoe Corp.*, 113 NLRB No. 35, wherein the Board found it unnecessary to pass upon the reasoning of its Trial Examiner that "oral designations . . . may in no event support the execution of a union security" contract.

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to the foregoing question is an affirmative one. I realize that my answer, involving elements of judgment upon a pattern of facts, is one with which others may not agree. However, my conclusion has been reached after more detailed and painstaking consideration than was possible prior to my denying, at the close of the General Counsel's case without prejudice to their renewal, the motions of the Respondents for dismissal of the complaints for lack of a *prima facie* case.

It should be noted that the mere fact that some 26 employees, 13 who testified and 13 whose testimony was stipulated, did not indicate any willingness to affiliate with the IAM until on or after August 16, does not

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establish what the remainder of the 148 employees may have done about designating the IAM by or before August 10. However, no such paucity of significance can be said to attach itself to the complete lack of knowledge of any kind of IAM organizational activities on the part of these 26 employees who, while definitely a minority, constituted over one-sixth of the employees in the unit who shared the small community environment within which the usual type of organizational campaign would have taken place. But while it seems unlikely that the IAM would have been able to obtain 75 adherents among employees in the Reading plant unit without any of those 26 employees ever having as much as heard of any IAM activities, such a situation is not inconceivable.⁶¹ But in any event, this aspect of the

⁶¹ In making this observation, I am mindful of the fact that a number of the 26 employees in question were shown to have been partisans of the IAW, from whom it is conceivable that the IAM might have deliberately tried to withhold any knowledge of competitive activities. Further, it should be noted that in *Hubbard Doig Co.*, 113 NLRB No. 4, cited by the General Counsel, the number of employees who gave this "never heard of" type of testimony was about half of the total number in the unit in that case.

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case, lack of knowledge, to which considerable attention has been given in the briefs, is only one aspect of a pattern which I discern in the evidence as establishing the *prima facie* case.

More significant than the foregoing, in my opinion, is what the record shows about the composition of the Temporary Bargaining Committee, whose members signed the wage supplement on August 17. Without recapitulating details already found above, let me say that it is very difficult to believe that if the IAM had actually previously secured a majority following in the plant by August 10, it would have included on a committee signing a contract on August 17, so many individuals who had not heard of the IAM until August 16. Further, it strains credulity to believe that, if the IAM had had a majority on August 10, the five employees from the second shift who signed the wage supplement would have been selected at random, from among nonmembers of the IAM on the afternoon of August 16, to meet with Schwartzmiller in Westbrook's office, at which time those five signed application cards.

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Also contributing significantly, in my considered judgment to the General Counsel's *prima facie* case, are the various above-discussed occasions upon which Schwartzmiller, the agent of the Respondent Unions best in a position to know the pertinent facts, failed to make any claim of having secured majority adherence in the unit, when confronted with the problem of how the IAM had been able to secure its contractual status. In fact, these explanations of Schwartzmiller, taken as a whole, are tantamount to an admission by this central figure, in the IAM's

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dealings with the Respondent Company and its employees, that the IAM's contractual position had been secured

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through means unrelated to any status as a majority representative.

So much for my major reasons for holding that the evidence adduced by the General Counsel during his case-in-chief, without regard to any inferences whatsoever pertaining to any outstanding subpoenas, established a *prima facie* case. We turn now to the problem of what conclusions as to majority and assistance are warranted upon the weight of the evidence in the record as a whole and the reasonable inferences to be drawn therefrom. Upon my denial, at the close of the General Counsel's case, of the motions by the Respondents for dismissal for lack of a *prima facie* case, the Respondents had the burden of proceeding with evidence under what the Board recently pointed to in its *Cadillac Marine* decision⁴² as "the well settled principle that a party has the burden of going forward with the evidence, after a *prima facie* case has been established against it." The Respondent Company, upon the conclusion of the General Counsel's case, did call one witness, McFann, whose denial of testimony of Moses has been considered above, and also sought to secure the testimony of Schwartzmiller, but later abandoned its unsuccessful attempts to serve him with a subpoena. But contrast, the Respondent Unions did not go forward with evidence pertaining to the *prima facie* case as to the alleged unfair labor practices, but rather stated on the record that it was not "necessary to attempt to refute any of the statements in the record by the witnesses of the General Counsel." Thereafter the Respondent Unions adduced evidence pertaining only to the affirmative defense of fronting.

It is to the significance of the clear failure of the Respondent Unions to meet in any way their burden of proceeding

⁴² See *Cadillac Marine & Boat Company*, 115 NLRB No. 30, footnote 1, in which the Board also cited *Pacific Mills*, 91 NLRB 60, 61.

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with evidence, pertaining to the *prima facie* case which had been established.

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against them, that we now turn.⁶³ Obviously when and how the International had organized among the Reading plant employees, and had included them in its Local Lodge No. 1424, per particularly within the knowledge of the Respondent Unions. Further, whatever the Respondent Unions may have believed about the validity of their legal arguments for refusing to comply, before the close of the General Counsel's case, with the respective *subpoenas duces tecum* issued to them, the substantially identical riders attached thereto constituted, in any event, very suggestive guides as to the various kinds of evidence, at least some of which the Respondent Unions should have had available to them, to meet the General Counsel's *prima facie* case, provided there had actually been any organizational activities on the part of the IAM in the union prior to August 16, 1954, or any authorization or application cards secured from employees therein prior to that date.⁶⁴ In addition, whatever difficulties, complications, or inadequacies may

⁶³ This *prima facie* case also included evidence as to the 1955 agreement which is considered in the next section of this Report. It may be helpful to note now that, in my opinion, the ultimate findings as to the 1955 agreement hinge upon findings as to majority and assistance with respect to the 1954 agreement.

⁶⁴ Essentially, in addition to contract drafts, the riders attached to said subpoenas sought from the International and the Local Lodge, with respect to any organizational activities among employees of the Reading plant, all authorization cards or other designations received; all authorizations for dues check-offs received; minutes or records of all meetings held; all expense accounts, memorandum or (Continued)

⁶⁴ (Continued) itineraries, or other records submitted by any organizers or representatives; and all handbills, posters, circulars, or other literature used.

have pertained to efforts made by the General Counsel or the Respondent Company, in attempting to serve Schwartzmiller with their respective subpoenas, the Respondent Unions made no claim whatsoever that they could not produce Schwartzmiller, and counsel for them stated on the record that "as far as" he knew Schwartzmiller "is still an employee of the IAM."

After studiously reviewing applicable rules of evidence and procedure, it is my considered judgment that, under all the circumstances of this case, the total failure of the Respondent Unions to come forward with any evidence, which might refute or explain that adduced by the General Counsel, warrants inferring either that no evidence of IAM organizational activities or designations at the Reading plant prior to August 16, 1954, existed, or that such evidence as the Respondent Unions did have was insufficient to detract materially from the *prima facie* case against them, or was unfavorable to the Respondent Unions in its tenor.⁵⁵ Surely, if the Respondent Unions had secured any significant number of membership applications or collective bargaining designations by any date material to a defense, such designations would have been produced by the Respondent Unions in their own defense at the hearing. Similarly, if there had been any significant amount of organizational activity among the employees in the Reading plant unit prior to August 16, that also could have been demonstrated by the Respondent Unions.⁵⁶ Further, if Schwartz-

⁵⁵ See 2 *Wigmore on Evidence*, Third Edition, Section 285; *Interstate Circuit, Inc. v. U. S.*, 306 U. S. 208, 226; and *N. L. R. B. v. Wallick*, 198 F. 2d 477, 483.

⁵⁶ For that matter, the Respondent Company, in preparation for trial, could surely have discovered enough evidence of such activity to have materially detracted from the General Counsel's case, if there had, in fact, been enough such activity to have resulted in anything approximating majority status for the IAM prior to August 16.

miller's role, or that of the members of the Temporary Bargaining Committee, had been substantially different from that indicated by witnesses called by the General Counsel, the Respondent Unions could have produced contrary evidence to refute, clarify, or explain aspects of the *Prima facie* case.

Everything considered, I am convinced, from the weight of the evidence as a whole and the reasonable inferences to be drawn therefrom, that the IAM had not been designated by a majority of the employees in the

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approximate unit at the Reading plant as their representative at any time prior to August 16, 1954. I am equally satisfied that such adherence as the IAM secured, on and after that date, cannot contribute to establishing a valid and unassisted majority. This is true because by August 16 and thereafter, the IAM was making known to employees in the unit the existence of the basic agreement containing union-security and checkoff provisions, which had been negotiated on August 10, signed by the Respondent Company about August 12 or 13, and signed by Schwartzmiller for the International not later than August 17. It thus becomes essentially immaterial, under the pertinent proviso of Section 8 (a) (3) of the Act, whether the date when the basic agreement, containing the union security provisions, was made be considered August 10, its effective date and the date upon which it was negotiated, or August 17, the date by which it was certainly fully executed. This is true because the IAM undoubtedly did not have a majority in the appropriate unit by the earlier date, while by the latter date, if perchance it had secured majority designation, said majority was not a valid one because it had been obtained by a labor organization which had by that time been assisted and supported by actions of the Respondent Company which, as of that date, and for reasons further explained

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hereinafter in Section III, G, were clearly embraced within "Section 8 (a) of this Act as an unfair labor practice," to quote from the proviso of Section 8 (a) (3) of the Act.

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E. *The agreement dated August 30, 1955,
and conclusions pertaining thereto*

Some general observations concerning this 1955 agreement, which extended the unit coverage to a second plant in Hillsdale, have already been noted in the general survey in Section III, A, above. It will be recalled that the 1955 contract issues were added by amendment at the hearing, at which time the Respondent Unions moved to dismiss, essentially on the ground that the 1955 agreement rendered the controversy moot. While there is much argument in the record as to the significance of this second agreement, and a good deal of testimony as to the circumstances surrounding its execution, in my opinion, after sifting the contentions and the evidence, the problem resolves itself essentially into whether this 1955 agreement constitutes, as the General Counsel fundamentally contends, not a separate and distinct but rather "a continuing violation" on the part of the Respondents, or actually constitutes, as the Respondent Unions contend in their brief, a "new agreement" between different parties which "is neither an extension, a renewal nor a modification of the original contract," and further, as the Respondents all contend, a contract made at a time when there could be no doubt as to majority status.

To come to grips with the foregoing essential issues, it is not necessary, as I see it, to discuss various problems and doubts raised by inconsistencies between the testimony of employee Margaret Hatfield concerning an IAM meeting on this contract, and the extensive testimony as to its negotiation given by Plant Manager McFann, who signed the 1955 agreement for the Respondent Company. This is so

because I am convinced that the ultimate result would be the same, whether one eventually viewed the reasonable inferences from the evidence as showing that the parties hastened to embrace an opportunity to expand and prolong their contractual relations,

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even before the second plant had actually been purchased and in the face of pending charges filed against them, or rather that the parties thereto arrived at the terms of the 1955 agreement as the result of numerous bargaining conferences, eventually held on several different days during the latter part of August, after the Respondent Company, faced with repeated demands for negotiations,⁶⁷ and finally with a threatened strike, was advised by counsel to go ahead with bargaining on a wage reopening request which it had earlier received.

It will be recalled that the wage supplement of August 17, 1954, provided that "hourly wage rates only" could be reopened on 60 days written notice given prior to August 10, 1955; that the basic agreement of August 10, 1954, between the Respondent Company and the International had an initial 2-year term which was to run until August 10, 1956; and that Article XXI of said basic agreement provided, in essence, that no alteration, variation or modification of 1954 agreement could be binding on the parties unless such agreement was executed in writing between said parties. Thus accepting a request for a wage reopening as the initial step leading to the 1955 agreement,⁶⁸ it is obvious from the terms of the 1954 agreement that the Local Lodge, which entered into the 1955 agreement under

⁶⁷ McFann testified that Schwartzmiller and Cederquist both sought such negotiations, as well as the local committee.

⁶⁸ I credit McFann's testimony that he received a letter, dated June 6, 1955, making such a request.

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the designation "Lodge #1424, International Association of Machinists, AFL," could not have entered into said 1955 agreement without at least the acquiescence of the International. Further, the 1955 agreement was signed not only by a committee of six headed by Sperbeck, president of the Local Lodge, but also by Carl Cederquist, as Grand Lodge Representative. Finally, whatever the details of the negotiations of the negotiations, it is clear from all of the evidence that both Schwartzmiller and Cederquist, representatives of the International, initiated the negotiations, and participated throughout the actual negotiations for the 1955 agreement. Schwartzmiller and Cederquist were also

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present at meetings of the Local Lodge held during the period of said negotiations.

Perhaps even more revealing on the issues now under consideration is a detailed comparison of the 2-year 1954 agreement with the 3-year 1955 agreement, the initial term of which runs from August 10, 1955, to August 10, 1958. In brief, the 2 agreements follow the same major pattern, having the same 22 articles with exactly the same titles in precisely the same sequence. In many cases, the entire texts of the parallel articles are identical. This is so with respect to the articles entitled "Checkoff" and "Union Shop." In several other articles, the texts are modified only slightly, as for instance where the 1955 grievance procedure incorporates shop stewards in its initial stages. In some cases, such as the "Leave of Absence" article, there are substantial additions as to details. Under the article entitled "General," the original two sections are repeated in the later agreement, and two new sections are added. In fact, a detailed comparison of the two agreements shows the incorporation of quite a number of changes of the type which a year's experience might well have indi-

cated were desirable. But in my opinion, the most significant changes, aside from adding a second plant and extending the term by 2 years, were made in the wage provisions and in the seniority provisions. In contrast with the 7 classifications set out in the 1954 wage supplement, the wage supplement of the 1955 agreement contains 11 classifications, each with 3 sets of wage rates to be effective on August 10, respectively of 1955, 1956, and 1957. As to the article on "Seniority," while almost half of its extensive provisions remain identical in wording, much of the rest of it is substantially or entirely new, particularly the part pertaining to the retention of seniority in both the Reading and the Hillsdale plants by all employees on the payroll as of August 30, 1955.

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It is my considered judgment that the evidence as a whole, realistically viewed, establishes that the 1955 agreement is actually the 1954 agreement, *extended* in its scope to include a second plant and in *time* to provide an additional 2 years to its initial term, and also *modified* as to its provisions to grant higher wage rates periodically to expand classifications, to meet miscellaneous problems revealed by a year's operating experience thereunder, and to provide for anticipated problems respecting seniority, with a second plant entering the picture.

It will be recalled that the extension of the unit to include the Hillsdale plant is not in issue, and I feel that the negotiation of clarifications as to seniority was particularly understandable, since regardless of the stage to which the actual plans had progressed, the Respondent Company was under the necessity of expanding its facilities to some nearby second plant/site. Thus the evidence shows, without dispute, that the Reading plant, which it had originally been planned would operate with about 150 to 200 em-

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ployees, had outgrown the available facilities. In fact, on August 30, 1955, the date of the 1955 agreement and some 2 months before the Hillsdale plant went into operation, there were approximately 350 employees in the unit at the Reading plant, of whom approximately 350 were then having their dues checked off.⁶⁹ Inasmuch as it was then the Respondent Company's plan, which it has since followed in setting up the

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Hillsdale plant, to transfer employees, all of whom had to be members of the IAM after 45 days of employment,⁷⁰ getting seniority problems with respect to the two plants definitely settled was obviously to the advantage of all of the Respondents.

But granting that everything which happened between the Respondents during approximately August 1955, and which resulted in the signing of the 1955 agreement, stemmed from unassailable factors and motives normally operating in labor-management relations, I find, under all of the circumstances prevailing herein, that the 1955 agreement is a modification and extension of the 1954 agreement, for which all of the Respondents are equally respon-

⁶⁹ These figures are from testimony of McFann, who also testified that there "may have been a few new employees at that time." In any event, there is no question that the identical union-shop provisions in the 1954 and the 1955 agreements have been enforced, and that dues have been checked off under the respective checkoff provisions. Furthermore, McFann testified on November 21, 1955, that the total employment at both plants at that time was about 480; that all but the "probationary" employees, whose number McFann estimated as possibly 30 or 40, but was uncertain of because they had "done a lot of hiring lately, in the last two months," had authorized the Respondent Company to check off their IAM dues; and that no employee who had been with the Respondent Company 45 days or more had ever refused to have his dues to the IAM checked off.

⁷⁰ For instance, the approximately 25 or 26 employees in the unit who were working at the Hillsdale plant on November 7, 1955, had all been transferred from the Reading plant.

sible. I further find that the 1955 agreement is subject to the same taint and infirmity as the 1954 agreement, already discussed in the immediately preceding section of this Report, and that it therefore constitutes a continuing violation. In any event, even if the 1955 agreement were to be considered a new agreement between different parties, the fact remains that any majority claimed by the Local Lodge at the time the 1955 agreement was entered into, which rests on checkoff authorizations then in effect and secured pursuant to the 1954 agreement, clearly would have no validity in establishing an unassisted majority, under the holding of the Board in its decision in *Oliver Machinery*.⁷¹

F. *The affirmative defenses*

1. THE SECTION 10 (b) DEFENSE

The general nature of the Section 10 (b) defense advanced by the Respondents, to preclude the finding of any unfair labor practices in the instant matter, has been indicated earlier in this Report. The General

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Counsel concedes that the 6-month limitation embodied in Section 10 (b) "bars a finding of unfair labor practices based upon the signing" of the 1954 agreement. This is so because the execution of said agreement occurred several months earlier than the beginning of the respective 6-month periods preceding the service of the respective charges.⁷² Hence the allegations of the respective complaints should be and hereby are dismissed, to the extent that they allege "entering into" the 1954 agreement to be an unfair labor practice.

⁷¹ See *Oliver Machinery Corporation*, 102 NLRB 822, 842.

⁷² While the term "filing" usually appears in the contentions of the parties, it is clearly the respective dates of service of these respective charges which are controlling. See footnote 2 for the dates of service of the charges.

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On the other hand, from all that has already been said and from the record as a whole, it is clear that at all times during and after the aforesaid respective 6-month periods, which for simplicity will hereafter jointly be referred to merely as the 6-month period,⁷³ the Respondents have maintained in effect and have enforced their identical union-security and checkoff provisions, first embodied in their 1954 agreement and thereafter contained in their superseding 1955 agreement, during which time, as figures above given show, the number of employees covered by these agreements has increased very substantially. It is as to the continuing violation, within the 6-month period and thereafter, that the General

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Counsel contends that Section 10 (b) constitutes no bar to findings of unfair labor practices "based upon the unlawful maintenance and enforcement" of the union-security provisions of the contracts. In short, the General Counsel views the 1954 agreement as so tainted with illegality, by virtue of conditions prevailing *when made*, that maintenance and enforcement thereof, and of the 1955 agreement which superseded it, constitute unfair labor practices beginning 6 months prior to the charges.

Because the circumstances of this case appear to pose an element of novelty with respect to the legal problem here being considered, I have given the matter a good deal of careful attention. The cases involving Section 10 (b) which have been painstakingly consulted have been quite numerous, and have not all pointed in the same direction. Further, the decision which I have finally reached, one essentially in accord with the position of the General Counsel, is not entirely free from doubt. This is so partly be-

⁷³ This 6-month period begins about 2 months earlier in Case No. 7-CA-1303 than it does in Case No. 7-CB-280.

cause the union-security provisions in issue admittedly and obviously are not illegal *per se*, if by *per se* one means on their face or in terms of their "verbage," and also because "the continuing violation theory," to use language from a recent Board decision cited by the General Counsel, that in *Bowen Products*,⁷⁴ "has been limited largely to situations involving the applications of union-security agreements which are prospective in nature and unlawful *per se*."

As I understand the decisions, there would be no doubt as to the correctness of the continuing violation theory with respect to Section 10 (b) if the 1954 agreement in this case had contained, let us say, a closed-shop provision, as did the agreement involved in the *McGraw* decision of the Sixth Circuit.⁷⁵ In the *McGraw* case, the agreement which was entered into between the company and the union on a nation-wide basis on July 1948 provided that the company, when the union could furnish them, would "employ

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only members of the union in good standing." The Board found that the company conformed to the general pattern of the agreement, when it "began hiring early in 1951 at the Paducah project." It was the company's position before the court with respect to Section 10 (b) that the Board's "findings were invalid because the 1948 contract was executed more than six months before the filing and serving of the charges." But the court said that the unfair labor practice alleged "was not the execution of this contract, but its enforcement and implementation after June, 1951, all of which took place within the period of limitations provided in the Act." In overruling the Sec-

⁷⁴ *Bowen Products Corporation*, 113 NLRB No. 63.

⁷⁵ See *N. L. R. B. v. F. H. McGraw and Co.*, 206 F. 2d 635, 367 to 639. This is one of the decisions cited by the Board in footnote 3 of its above-mentioned *Bowen Products* decision.

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tion 10 (b) contention of the company in a situation where almost 3 years had intervened between the execution of the contract and the beginning of the continuing violation, the Sixth Circuit said:

As long as the contract in violation of the Act continued in force, a continuing offense was being committed; and since the contract was in force at the time of filing, the six-month period of limitations had not begun to operate; and the complaint was, in all respects, valid.⁷⁴

While it is generally true that the "cases in which the Board and the Courts have found a continuing violation are cases in which the verbiage of the union security clause is illegal," as the brief of the Respondent

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Unions phrases it, there is one Board decision, *Federal Stores*,⁷⁵ cited by the General Counsel, in which a holding of violation, by virtue of *continued enforcement* of an agreement *executed* prior to the 6-month period, was bottomed squarely on failure *at the time of execution* to satisfy a stipulated condition. Said condition, since removed by amendment from the proviso to Section 8 (a) (3) of the Act, which was then required but had not been satisfied in the *Federal Stores* case, was that the union-security agreement be authorized pursuant to an election conducted by the Board. Thus in the *Federal Stores* case, where a *prerequisite condition* was lacking with respect to the agreement

⁷⁴ For a similar result in a Board decision, see *Paul M. Speer*, 99 NLRB 212, in which the Board found that the continued effectiveness, within the 6-month period preceding the service of charges, of a contract containing an illegal union-security provision was violative of the Act by both the company and the union involved, although Section 10 (b) precluded a finding that the execution of the contract was unlawful.

⁷⁵ See *Federal Stores Division of Speigle, Inc.*, 91 NLRB 647, 653-7, and 661.

when made, Section 10 (b) served only to protect the execution of the agreement from being found to constitute an unfair labor practice, but it did not protect the continued enforcement of said agreement from unfair labor practice findings beginning with the 6-month period prior to the service of the charge.

In my opinion, the above general result reached by the Board in its *Federal Stores* decision, and its reasons therefore,² are applicable to the case at bar, even though the *unmet prerequisite conditions* herein are different. In short, it is my considered judgment that since, for reasons discussed elsewhere in this Report, the 1954 agreement when made failed to meet *prerequisite conditions* then and presently specified in the proviso to Section 8 (a) (3) of the Act, said 1954 agreement was *ab initio* just as illegal, null, and void as it would have been if its terms on their face had failed to meet requirements specified in said proviso. Accordingly I find that the Section 10 (b) defense advanced by the Respondents must fail.

2. THE DEFENSE BASED ON ALLEGED FRONTING

It will be remembered that the chronological setting of major

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factors about fronting, with respect to other factors in the instant matter, has been presented in Section III, A. To present fully now all of the facets of the evidence and the contentions concerning fronting, to all of which I have given very careful consideration, would greatly protract this Report. In my judgment, such a detailed approach is not necessary because, despite the novelty of some of the contentions and certain unresolved doubts, I have become convinced that, in any event, the defense of fronting

² Compare also the above-cited *Oliver Machinery* decision.

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must fail because it appears from the weight of the credible evidence as a whole that, in giving advice and assistance which was sought by Mead and other employees, President Salomon was actually functioning as an individual, rather than on behalf of Local 701.

Let us first consider briefly certain relevant facts concerning the compliance status of Local 701. Admittedly Local 701 was not in compliance on August 5, 1955, at the time Mead filed her original charge in Case No. 7-CB-280 and her supplemental charge in Case No. 7-CA-1303, or at the time the complaints in the instant matter were issued on October 5, 1955. But Local 701 had been in compliance during the spring of 1955 when Salomon, as is more fully indicated hereafter, was advising Mead and other employees,⁷⁹ and it was also in compliance at the time Mead filed the first of the charges, the original charge in Case No. 7-CA-1303, on June 9, 1955. However, Local 701 has evidently not again perfected its compliance since a slate of officers, elected shortly before, took office on June 13, 1955.⁸⁰ On that date, Salomon, who

⁷⁹ The record is consistent in showing that Local 701's last term of full compliance became effective on March 30, 1955.

⁸⁰ Assuming, as the General Counsel essentially contends, that this failure of Local 701 to again perfect compliance under its new slate of officers consists merely of a technical defect, arising because one of the officers submitted one instead of two (Continued)

⁸⁰ (Continued) affidavits," and assuming further that said defect has not been corrected "due to a ministerial error on the part of the

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Regional office," in sending notices of lack of compliance to a former officer, rather than to an individual currently holding office, I find no precedent for a Trial Examiner disposing of a fronting issue on any such grounds as that the admitted failure fully to achieve compliance was merely a technical one, or was due merely to a ministerial error. A 2-page letter dated December 2, 1955, from the General Counsel concerning compliance matters, which was addressed jointly to me and to Attorneys Gallucci and Poulton, is hereby made a part of the formal file in the instant matter.

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had not been a candidate for reelection, ceased to be president of Local 701. He was succeeded on June 13 by Roland Playford, who testified credibly and convincingly on November 23, 1955, that Local 701 had engaged in no organizational activities since he had become its president; that he did not know Mead; and that he had not heard of Mead until about 6 weeks before his testimony. It should also be noted that William Nichols, the recording secretary of Local 701 since June 1954, testified forthrightly and convincingly on November 23, 1955, that his duties included seeing "that the affidavits are filled out and notarized and sent in"; that he had come the preceding day to see the General Counsel because he had "heard by the grape vine" that Local 701 was not in compliance; and that he had told the General Counsel that they were in compliance because he had mailed the affidavits himself and "knew they were in there, and that they were sent in the same this year as we sent in previous years."⁸¹

The overall position of the Respondents⁸² is essentially that Mead was fronting for Local 701 when she filed the first of her charges on June 9, 1955, and that she thereafter "continued to front for Local 701" in her filing of the two subsequent charges on August 5 "concerning the same or similar allegations contained in the original charge." The primary position of the Respondents thus rests upon a

⁸¹ The record shows that two letters notifying Local 701 of "deficiencies in 9 (b) compliance," dated June 22, 1955, and November 18, 1955, were mailed to William H. Burger, the financial secretary of Local 701 before some of the officers were changed on June 13, 1955. Prior thereto, beginning during the latter part of 1954, a number of earlier letters concerning compliance had been addressed to Burger during his term of office. There is nothing in the record to suggest what may have happened to the compliance letters erroneously sent to Burger after he had ceased to be an officer of Local 701.

⁸² This summary of position is from the brief of the Respondent Unions which the Respondent Company's brief "incorporates by reference . . . as though it were fully contained" therein.

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continued fronting theory, it being their contention that the charges of August 5 are "all directly connected with the allegations in the original charge." In fact, the Respondents did not seek to offer any evidence as to events after June 9, relying rather on evidence as to developments up through that date to establish, as it were, a momentum of fronting which under their theory would continue through to the subsequent charges which were filed almost 2 months later.⁸³

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Certain unusual circumstances in this case lead the Respondents to take an additional position with respect to the fronting issues. This position is expressed in the following paragraph which is quoted in full from the brief of the Respondent Unions:

There is an additional reason for the Charging Party fronting for this Local, which the evidence will bear out, and that is, the International of the UAW-CIO, had notified this Local to cease organizing at Bryan Mfg. Co. because of the IAM-UAW No Raid Agreement, and in disregard of this order, the Local's President continued his organizing activities. If the Local

⁸³ The General Counsel offered to prove, in essence, through details as to events occurring after June 9, that even if Mead had originally been fronting for Local 701 when he filed the first of her charges, various alterations and pressures during the ensuing 2 months had so personally incensed her as to reorient Mead's motivation and thus wash out any alleged original fronting, thereby making her charges of August 5 her own acts, in any event. Since I am now convinced that fronting did not exist in the first place, any such showing as to subsequent events by the General Counsel would have no bearing upon a theory of continued fronting, where the original fronting has not been established by the evidence. It is for this reason that I have decided, as earlier indicated, not to reopen the hearing to receive such evidence. It is also noted that during their cases, the Respondents gave notice of intention to amend their (Continued.)

⁸⁴ respective answers to include certain allegations as to conduct of Regional Office personnel, but that later, as appears in the record, such intentions to amend were withdrawn.

has filed charges on behalf of the employees at Bryan Mfg. or on its own behalf, it would have been in disregard of the order of the International. Therefore, to obtain the same result, the Local's President had the Charging Party sign the charges. The Charging Party was fronting for the Local to secure benefits which would insure to the Local and not to herself because of the IAM-UAW No. Raid Agreement. As Local 701, UAW-CIO, was not in compliance at the time the Complaint issued then the defect of lack of compliance was fatal to the issuance of any Complaint. There is no doubt that the crucial date is the date on which the Complaint issued. [Footnote reading "See *NLRB vs. Dant*, 344 US 375, 73 S Ct. 375."]

In my opinion, the fronting issues should be approached through an appraisal of the relationship of the roles of Salomon and Mead to Local 701, viewed in the light of all the circumstances. If these roles added up to fronting, in the sense that Mead was acting for Salomon who was acting for Local 701, a number of other interesting questions, some of them apparently novel, would present themselves for consideration. But as I view the total

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picture after careful consideration, we do not reach certain other problems because I am satisfied that Salomon was acting on his own in advising a group of employees who had come to him with what they felt were problems. In turning now to some of my reasons for reaching the foregoing conclusion, let me point out that, as the Board said in its *Wood Parts* decision,²⁴ whether an individual who filed a charge:

was acting as an individual seeking redress for violations of the Act . . . or was acting as a representative

²⁴ *Wood Parts, Inc.*, 101 NLRB 445, 446.

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of the noncomplying union so that his charges were merely a device whereby the union could avoid complying and yet seek by subterfuge to reap the benefits of the Act . . . presents a question of fact which must be determined by an appraisal of all the evidence in the light of the circumstances then existing.

It will be recalled that during July 1954 the UAW, about whose compliance status no question is raised, began securing authorization cards from employees of the Reading plant, and that some meetings were held, principally at the home of Mary Carter. Mead's role in this 1954 activity, which was initiated and directed by an international representative of the UAW, with assistance from members of Local 701, appears to have been confined to attending at least one meeting. Mead did not sign a UAW authorization card, although she knew others were doing so.

It should be noted that had the UAW's organizational activities succeeded, Local 701 might ultimately have included the employees of the Reading plant within its amalgamated coverage. However the question of any such inclusion, which would have required the approval both of Local 701 and of the Reading employees, was never reached. Further, it was

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also possible under UAW procedure for the Reading plant employees to have constituted a local of their own. But whatever the relationship between the Reading plant employees and Local 701 might ultimately have been, it is clear that the UAW apparently about the last of August or the first of September 1954, decided to drop its organizational activities at the plant and that, through two of its international representatives, it also instructed Local 701 to drop the matter. Save for Salomon's admitted dislike of those instructions and his subsequent activity in the

spring of 1955, beginning some 8 months later, there is nothing in the record to show any disagreement with those instructions on the part of any other officers of Local 701, or any activity thereafter on the part of any officer of Local 701 other than Salomon.

In connection with the above broad finding, three matters referred to in the brief of the Respondent Unions should be noted. Florence Napier, when called as a witness by the Respondent Unions, testified that on August 23, 1954, five individuals, who apparently were members of Local 701, passed out circulars about which Napier knew nothing except that they contained at the bottom the legend "UAW-CIO." According to Napier, those circulars were distributed 2 days before an IAM mass meeting of employees, which I am satisfied was the meeting at which the IAM's organization was carried forward by an election of officers, among other things. In any event, whatever those UAW circulars, distributed outside the plant by five members of Local 701 on August 23, may have contained, I am satisfied that this incident took place before the UAW abandoned its organizational activities and instructed Local 701 to do likewise.

We come now to a second matter raised by Respondent Unions, the fact that Financial Secretary Burger drove Salomon's car to Detroit on June 9, 1955, the day that Mead, in company with Salomon and Beulah

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Layman, at whose home two meetings had recently been held, went to the Regional Office to file the original charge. I am convinced from the testimony of Salomon and Mead that Burger had nothing whatsoever to do with the filing of said charge; that said charge was actually drawn up in the Regional Office by a staff member, after Mead had explained her version of the situation in an interview lasting approximately half an hour, during about half of which Salomon

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was present; that Burger did not accompany Mead when she went with Salomon and Layman to the Regional Office; and that Burger and Salomon made their trip that day to Detroit to transact union business which, as Salomon credibly and in detail explained it, obviously had nothing to do with Reading plant employees or Mead's charge, said business being transacted by Salomon and Burger at the UAW's headquarters before the charge was filed, and while Mead and Layman waited in Salomon's car in a parking lot.

As to the third point, the August 17, 1954, conversation between Schwartzmiller and several officials of Local 701, other than Salomon, clearly occurred prior to the UAW's decision to abandon its organizational activities. It will also be remembered that said conversation ended with the officers of Local 701 saying that the "two International unions will have to fight it out."

Not only is there no evidence establishing that any officer of Local 701, other than Salomon, had anything to do with aiding or advising the group for which Mead eventually acted in filing their original charge,⁸⁵ but there is credible testimony indicating that Salomon was not acting for Local 701 in advising said employees. For instance, Burger testified convincingly that when the Executive Board of Local 701 learned that the UAW's International organizer had requested them to drop organizing

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at the Reading plant, they voted unanimously to do so. Also Recording Secretary Nichols, referring to Local 701's official minutes which were produced at the hearing, testified convincingly that at "a local meeting" on September 23, 1954, a motion was passed that "the president shall not do any organizing on Local money"; that there had been

⁸⁵ Their original letter of inquiry to the Regional Office in May had been written "as a group," but the reply received thereto had stated that only one individual needed to sign a charge.

no further "official motion since that date" concerning the matter; and that there had not subsequently been any assistance to the UAW in organizing Bryan employees. In addition, Salomon testified credibly that Local 701 had not had any knowledge of his accompanying Mead on her visit with Layman to the Board office on June 9. In short, however much Salomon's activities in the spring of 1955 may appear to have contravened the instructions given by international representatives of the UAW, the weight of the credible evidence does not warrant ascribing those activities to Local 701. On the contrary, I am convinced that in rendering advice and assistance, which will now be briefly summarized, Salomon was acting as an individual in responding to requests made of him.

There can be no doubt from all of the evidence that beginning about April 1955, and continuing until a meeting at Beulah Layman's home on the evening of June 8, a number of meetings were held by Reading plant employees who were concerned about how the IAM was representing them and about employment matters, including the discharge of several employees. While the exact number and dates of these meetings cannot be established, there apparently were several such meetings. It also appears, from my analysis of all of the testimony, that Salomon attended at least one of several meetings held during this period at the home of Mary Carter;⁵⁶ that Salomon attended, upon invitation, an open meeting of the IAM, which was held in a hall after the members of the Local Lodge had voted to have such an open meeting; and that Salomon also attended two meetings at Layman's home,⁵⁷ the last being a meeting on June 8, at which it was definitely

⁵⁶ Mrs. Carter, whose husband was a steward in Local 701, testified that she had known Salomon since she was "about 6 years old."

⁵⁷ It is not clear how many employees attended these various meetings, but as many as 50 may have attended one of the meetings in Layman's house.

decided to file charges.

The evidence is essentially consistent that Salomon attended the above meetings because he was invited to do so, and that he repeatedly told those present that he was there only in his capacity as an individual. To illustrate, Joseph Smith testified, when called as a witness by the Respondent Unions, that Salomon was at two meetings which he had attended, one at Carter's and one at Layman's, and that Salomon had told them "quite often" that he was not there "representing anybody, but just as an individual trying to give Maryalice some help." Smith also testified that Salomon said, among other things, that "Maryalice had come to him for help"; that he "would like as much information as they could give him, as to other people that had been fired"; that there was "a possibility the IAM could be removed from the shop, and we could vote for a union of our choice"; and that he was not trying to compare the IAM to the CIO but that no union "he knew of would have a no-strike clause such as we had in our contract." Assuming Smith's version, which I feel was somewhat overstated, represents approximately the general role which Salomon played in the meetings he attended, I see nothing in such participation to establish that Salomon was acting in any role other than that of an individual.

Moreover, my study of the testimony of Mead and Salomon as to the various other occasions, upon which they met individually during

⁸⁸ During his testimony, Salomon named several others who also had come to him.

⁸⁹ According to Salomon, what he stated was that "there was a possibility the Board would order an election, and they would have the right to join the union of their own choosing."

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the spring of 1955, convinces me that it was always Mead who went to Salomon; that there were several occasions upon which Mead sought Salomon's advice, both at another plant where Salomon worked and at the office of Local 701, about matters of concern to employees of the Reading plant; that their conversations on such matters sometimes overlapped their negotiations about the purchase of a saddle horse;⁹⁰ and that while Mead was undoubtedly influenced by Salomon's advice and suggestions, included information as to the filing of a charge, it was Mead, and the dissatisfied employees among whom she assumed leadership, who sought out Salomon, rather than the other way around. And it should be remembered that Mead's action in filing the original charge did not take place until many months after the UAW's organizational campaign had been abandoned in the face of the 1954 contract which the IAM had signed under illegal conditions described earlier in this Report.

To sum up, in my opinion an appraisal of all of the evidence, in the light of the circumstances then existing, reveals essentially this picture. Discontent at the Reading plant developed among employees who resented the way in which their right to self-determination had been thwarted when the IAM's contract had literally been thrust upon them in August 1954. This discontent, compounded with suspicions and uncertainties as to why some employees had been discharged,⁹¹ resulted in meetings among employees during the spring of 1955. Despite the abandonment of its organizational campaign by the UAW, leaders

⁹⁰ During June 1955, Mead, a young woman approximately 21 years of age, finally bought a horse from Salomon, a substantially older man. Mead thereafter paid for the horse in a series of installments.

⁹¹ Whether or not there was any basis for such feeling concerning discharges is not in issue in the instant case.

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among those who were discontented, some of whom were personally acquainted with Salomon, turned to Salomon for advice at a time when he was president of Local 701, and Local 701 itself was actually in full compliance. Salomon, because of his sympathy with what he believed to be problems of those employees, gave advice and assistance sought, repeatedly explaining that he was acting as an individual in doing so. The original charge in Case No. 7-CA-1303 included not only

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allegations as to discharges of seven employees other than Mead, but it also included allegations as to the Respondent Company's having thwarted efforts toward self-organization by having recognized and contracted with the IAM. Mead thus was presenting grievances not only for other employees, but also her own grievance about the IAM, under whose contract she was being required to pay dues to a labor organization in the choice of which she, as well as other employees, had had no opportunity to participate, thereby being deprived of fundamental rights guaranteed by the Act.

A careful reading of the two court decisions from which the Respondent Unions quote in their brief, the Sixth Circuit's decisions in *Alside*⁹² and the Fifth Circuit's decision in *Happ Bros.*,⁹³ will reveal how clearly distinguishable the facts in those two cases are when compared with the facts in the case at bar. It will also lead to the conclusion that what the Ninth Circuit Court said in its *Ronney* decision,⁹⁴ in distinguishing the *Happ Bros.* and *Alside* decisions, is equally applicable here, namely that in "each of those cases the court held that where the president and chief protag-

⁹² *N. L. R. B. v. Alside, Inc.*, 192 F. 2d 678.

⁹³ *N. L. R. B. v. Happ Bros., Co., Inc.*, 196 F. 2d 195.

⁹⁴ *N. L. R. B. v. L. Ronney & Sons Furniture Mfg. Co.*, 206 F. 2d 730, 732.

(1440)

onist of the interested but disqualified union" had filed the charges on behalf of himself, and a great number of other union employees "he was acting as a representative of the union and not as an individual," but that those cases were not

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applicable to the case at bar. It should also be noted that in its *Ronney* decision, the Ninth Circuit quoted with approval the following language from the decision of the Fifth Circuit in *Augusta Chemical*:⁹⁵

Granting that the disqualified union was active in assisting, indeed in directing, the employees in preparing their charges, it does not at all follow that the employees, by accepting that assistance, qualified themselves.

Similarly, the Board's decision in *Publishers Printing*,⁹⁶ which the Respondent Unions cite, is clearly distinguishable. In that case the individual, who was held to have been fronting, was a member of the union actively soliciting for it; he filed the charge when organizational activities were "in full swing"; and the union manifested an interest in processing said charges.

In view of all the foregoing and the record as a whole, I find that Mead was not fronting for Local 701 when she filed the original charge in Case No. 7-CA-1303, or the two subsequent charges on August 5, 1955, but that Mead was rather acting within the limits accorded by applicable decisions to an individual seeking redress under the Act.

G. *Conclusions As To the Unfair Labor Practices*

As to Case No. 7-CB-280, on the basis of the findings and conclusions set out hereinabove, and the decisional pre-

⁹⁵ *N. L. R. B. v. Augusta Chemical Co.*, 187 F. 2d 63, 64.

⁹⁶ *Publishers Printing Company, Incorporated*, 110 NLRB 55.

(1441)

cedent cited in the margin,⁹⁷ I conclude and find that the Respondent Unions, by continuing in effect, during and after the 6-month period preceding the service of the charge in Case No. 7-CB-280, their illegal union-security agreement dated

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August 10, 1954, and their superseding illegal agreement dated August 30, 1955, have violated Section 8 (b) (2) of the Act, and have restrained and coerced employees within the meaning of Section 8 (b) (1) (A) of the Act.

With respect to Case No. 7-CA-1303, one further position taken in the Respondent Company's brief should be considered. It is therein contended that with the background of this case "it is both reasonable and fitting that the Company would almost unquestionably follow the legal advice of a trusted counsellor." Let us assume that the Respondent Company did not know of the organizational activity of the UAW prior to its decision to recognize the IAM. Let us also assume that the Respondent Company had no reason to doubt the IAM's claim of majority representation when it negotiated and signed the basic 1954 agreement. Let us further assume that at no time during its deciding to recognize, to bargain with, and to enter into the contract with the IAM, was the Respondent Company motivated by economic pressures, direct or indirect. Nevertheless, in view of the unmistakable requirements of the proviso of Section 8 (a) (3) of the Act, neither the good faith of its attorney in giving advice, nor the good faith reliance of his client in accepting advice, can serve as a defense, since the Respondent Company, in recognizing the IAM and in entering into a union-security contract with it, without requiring the IAM to establish the majority which

⁹⁷ See *Harold Hibbard and Ben E. Stein, d/b/a Hibbard Dowel Co.*, 113 NLRB No. 4, and *Robbie Shoe Corp.*, 113 NLRB No. 35.

is a legal prerequisite for such a contract, obviously acted at its peril. And since the IAM was not the majority representative, the Respondent Company, regardless of its motives, illegally assisted and supported the IAM when it granted recognition to and contracted with the IAM.⁹⁸ Accordingly, on the basis of the

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findings and conclusions set out hereinabove, including the decisional precedent cited in the two immediately preceding footnotes, I conclude and find that the Respondent Company, by continuing in effect, during and after the 6-month period preceding the service of the charge in Case No. 7-CA-1303, its illegal union-security agreement dated August 10, 1954, and its superseding illegal union-security agreement dated August 30, 1955, has violated Section 8(a) (2) and (3) of the Act, and has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, in violation of Section 8(a) (1) of the Act.

On the other hand, making all due allowances for various details in the General Counsel's evidence which have not been set out herein, but which have all been fully considered, I am not satisfied that the entire pattern of events pertaining to the 1954 agreement and the 1955 agreement, as revealed by the weight of the credible evidence, establishes

⁹⁸ See *Adam D. Goettl and Gus Goettl d/b/a International Metal Products Company*, 104 NLRB 1076, 1077, wherein the Board found violations of Section 8(a) (1) and (2) of the Act, in a situation where the contract does not appear to have included a (Continued)

⁹⁹ (Continued) union-security provision. The holding of the Board is based squarely on the fact that the contracting union "was not the majority representative of the employees involved when recognition was granted and the contract executed." An examination of footnote 1, which follows the foregoing quotation, makes it plain that the Board, in reaching the foregoing holding, did not rely upon, or even pass upon, any knowledge which the company in that case may have had as to any interest on the part of another union, or any such desire as the company may have had "to avoid costly conflicts" with the union with which it did contract.

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that the Respondent Company has sponsored and dominated the Respondent Unions.⁹⁹ Accordingly such allegations of the complaint in Case No. 7-CA-1303 should be and hereby are dismissed.

IV. The Effect Of the Unfair Labor Practices Upon Commerce

The activities of the Respondents, set forth in Section III, above, occurring in connection with the operations of the Respondent Company set forth in Section I, above, have a close, intimate, and substantial relation to trade, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

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Having found that the Respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom, and that they take certain affirmative action, designed to effectuate the policies of the Act.

It has been found that the Respondents have engaged in unfair labor practices by continuing in effect and enforcing their illegal union-security agreements. Among other things, said agreements require all employees, in the units therein specified, to join and to pay dues and initiation fees to the Respondent Unions. However, the Respondent Unions have not been legally designated as exclusive bargaining representatives by an unassisted majority of such employees. It will accordingly be recommended that the

⁹⁹ The four decisions cited in footnote 17 of the brief of the Respondent Unions have been duly considered in reaching the above and other determinations.

Respondent Company cease giving effect to such agreements, or to any extensions, renewals, modifications, or supplements thereto or to any superseding agreements with the Respondent Unions, unless and until said Respondent Unions, or either one of them, shall have been duly certified by the Board as the representative of the Respondent Company's employees in an appropriate unit.

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It should be noted, however, that nothing herein shall be construed as requiring the Respondent Company to vary any wages, hours of employment, rates of pay, seniority, or other substantive provisions in its relations with the employees themselves, which the Respondent Company had established in the performance of said agreements. Furthermore, to the extent that the Respondent Company has deducted periodic dues and initiation fees from wages of employees and former employees for remittance to the Respondent Unions, under signed authorizing procedures, it will be recommended that the Respondent Company and the Respondent Unions, jointly and severally, be ordered to make whole each of said employees for the amount of dues and initiation fees deducted from his wages beginning with the respective applicable 6-month periods.

With respect to the Respondent Company, the usual procedures and type of notice will be recommended. As to the posting of notices by the Respondent Unions, since only employees of the Reading and Hillside plants of the Respondent Company and only members of Local Lodge No. 1424 appear to be involved in the instant matter, I deem it sufficient for the remedial purposes of the Act for the Respondent Unions to sign the joint notice, attached hereto as Appendix B, to supply such signed notices for posting by the Respondent Company, and to post such signed notices in all appropriate places.

Upon the basis of the foregoing findings of fact and the

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legal conclusions already stated, and upon the entire record in the case, I make the following:

Conclusions of Law

1. The Bryan Manufacturing Company is engaged in commerce.

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within the meaning of Section 2 (6) and (7) of the Act.

2. International Association of Machinists, AFL-CIO; Local Lodge No. 1424, International Association of Machinists, AFL-CIO; International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO; and Local 701, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO; are all labor organizations, within the meaning of Section 2 (5) of the Act.

3. By discriminating in regard to the hire and tenure of employment of its employees, thereby encouraging membership in International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, the Bryan Manufacturing Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

4. By assisting and contributing support to International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, the Bryan Manufacturing Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (2) of the Act.

5. By its discrimination in favor of, and by its assistance to and support of, International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, the Bryan Manufacturing Company has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby violating Section 8 (a) (1) of the Act.

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6. By causing the Bryan Manufacturing Company to discriminate in regard to hire and tenure of employment in violation of Section 8 (a) (3) of the Act, International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (b) (2) of the Act.

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7. By restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, having engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (b) (1) (A) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS ¹⁰⁰

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that:

I. The Respondent Company, the Bryan Manufacturing Company, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining, renewing, or enforcing its agreements dated August 10, 1954, and August 30, 1955, or any agreement with International Association of Machinists, AFL-CIO, and/or Local Lodge No. 1424, International Associ-

¹⁰⁰ With appropriate modifications, these recommendations largely follow the Board's order in *Hibbard Dowell, supra*, which I find most nearly suited to the requirements herein.

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ation of Machinists, AFL-CIO, or any other labor organization, which requires its employees to join, or to maintain their membership in, such labor organizations as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act;

(b) Recognizing International Association of Machinists, AFL-CIO, and/or Local Lodge No. 1424, International Association

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of Machinists, AFL-CIO, or any successor to either of them, as a collective bargaining representative of any of its employees for the purpose of dealing with the Respondent Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, or either of them, shall have been certified by the Board as the bargaining representative of such employees;

(c) Performing or giving effect to the agreements of August 10, 1954, and August 30, 1955, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with International Association of Machinists, AFL-CIO, and/or Local Lodge No. 1424, International Association of Machinists, AFL-CIO, relating to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, unless and until International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO or either of them, shall have been certified by the Board, provided, however, that nothing herein shall be construed to require the Respondent Company to vary any substantive provisions of such agreements, or to preju-

dice the assertion by the employees of any rights which they may have thereunder;

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form or join labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an

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agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, as the representative of any of its employees for the purpose of dealing with the Respondent Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other condition of employment, unless and until International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, or either of them, shall have been certified by the Board as such representative;

(b) Post at its plants in Reading and Hillsdale, Michigan, copies of the notices attached hereto as Appendix A and Appendix B. Copies of such notices, to be furnished by the Regional Director for the Seventh Region, shall,

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after Appendix A has been duly signed by the Respondent Company's representative, be posted by the Respondent Company immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Seventh Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent

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Company has taken to comply herewith.

II. The Respondent Unions, International Association of Machinists, AFL-CIO, and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, their officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Maintaining, renewing, or enforcing their agreements dated August 10, 1954, and August 30, 1955, or any other agreement, with the Bryan Manufacturing Company, which requires employees to join, or maintain their membership in, International Association of Machinists, AFL-CIO, and/or Local Lodge No. 1424, International Association of Machinists, AFL-CIO, as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act.

(b) In any like or related manner causing or attempting to cause the Bryan Manufacturing Company, or any

other employer, to discriminate against any employee in violation of Section 8 (a) (3) of the Act;

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Post at all of their officers or quarters servicing or used by members of Local Lodge No. 1424, International Association of Machinists, AFL-CIO, copies of the notice attached hereto as Appendix B.

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Copies of said notice; to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by representatives of both of the Respondent Unions, be posted immediately upon receipt thereof, and be maintained by the Respondent Unions for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of Local Lodge No. 1424, International Association of Machinists, AFL-CIO, are customarily posted. Reasonable steps shall be taken by both of the Respondent Unions to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail to the Regional Director for the Seventh Region, signed copies of the notice attached hereto as Appendix B, for posting in the above-named Respondent Company's plants in Reading and Hillsdale, Michigan, for sixty (60) consecutive days in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by representatives of both of the Respondent Unions, be forthwith returned to said Regional Director for such posting.

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(c) Notify the Regional Director for the Seventh Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, what steps the Respondent Unions have taken to comply herewith.

III. The Respondent Company, the Bryan Manufacturing Company, its officers, agents, successors, and assigns; International Association of Machinists, AFL-CIO, its officers, representatives, agents, successors, and assigns; and Local Lodge No. 1424, International Association of Machinists, AFL-CIO, its officers, representatives, agents, successors, and assigns; shall jointly and severally reimburse the employees and the former

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employees of the Respondent Company, whose dues and initiation fees in the Respondent Unions have been checked off pursuant to the Respondents' agreements of August 10, 1954, and August 30, 1955, or any extension, renewal, modification, or supplement thereof, or any agreement superseding either of said agreements, for the amounts deducted from the earnings of such employees, beginning with the respective applicable 6-month periods.

IT IS FURTHER RECOMMENDED that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, the respective Respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring each of the Respondents not so notifying to take the action aforesaid.

Dated at Washington, D. C., this 17 day of April 1956.

EARL S. BELLMAN

Earl S. Bellman

Trial Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL withdraw all recognition from and WE WILL NOT recognize the INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and or LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, as the exclusive bargaining representative of the employees they have heretofore represented at our Reading and Hillsdale plants, unless and until said organizations, or either of them, shall have been certified by the National Labor Relations Board as such representative.

WE WILL NOT perform or give effect to our agreement dated August 10, 1954, or our agreement dated August 30, 1955, with INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and or LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or to any extension, renewal, modification, or supplement thereof, or to any superseding agreement with either of said unions, unless and until said unions, or either of them, shall have been certified by the National Labor Relations Board as the bargaining representative of employees in an appropriate unit, and unless said agreement shall conform to the provisions of the National Labor Relations Act.

WE WILL NOT give effect to any checkoff authorizations heretofore executed by our employees, authorizing the deduction of initiation fees and periodic dues from their wages for remittance to INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and/or LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO.

WE WILL NOT encourage membership in INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any other labor organization, by conditioning the hire or tenure of employment or any term or condition of employment upon membership in, affiliation with, or dues payments to said unions, or any other labor organization, except where lawful provisions therefor shall have been established by an agreement in conformity with the provisions of the National Labor Relations Act.

WE WILL NOT assist or contribute support to the INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the self-organizational rights guaranteed to them by Section 7 of the National Labor Relations Act, except to the extent such rights may be affected by an agreement made in conformity with the provisions of the National Labor Relations Act, requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

(1454)

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WE WILL refund to all our employees and former employees from whose wages we have deducted or withheld funds for transmittal to the INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and/or LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO; the amount of all such deductions and withholdings made, subsequent to December 10, 1954.

BRYAN MANUFACTURING COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, AND INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, AND TO ALL EMPLOYEES OF THE BRYAN MANUFACTURING COMPANY

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act; we hereby notify you that:

WE WILL NOT perform or give effect to our agreements with the BRYAN MANUFACTURING COMPANY dated August 10, 1954, and August 30, 1955, and will not enter into, give effect to, or enforce any extension,

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renewal or modification thereof, of any supplemental or succeeding agreement, unless and until one or the other or both of us shall have been certified by the National Labor Relations Board as the representative of BRYAN MANUFACTURING COMPANY employees in an appropriate unit, and unless the agreements that may subsequently be entered into conforms to the provisions of the National Labor Relations Act.

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WE WILL NOT cause or attempt to cause the BRYAN MANUFACTURING COMPANY, its officers, agents, successors, or assigns, to condition the hire or tenure of employment, or any term or condition of employment, upon membership in, affiliation with, or dues payments to our labor organizations, except where lawful provision therefor shall have been established by an agreement in conformity with the National Labor Relations Act.

WE WILL NOT in any like or related manner cause or attempt to cause the BRYAN MANUFACTURING COMPANY, its officers, agents, successors, or assigns to discriminate against employees in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of the BRYAN MANUFACTURING COMPANY in the exercise of their self-organizational rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

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WE WILL refund to all employees and former employees of the BRYAN MANUFACTURING COMPANY from

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whose wages sums have been deducted or withheld for transmittal to us, the amount of all such deductions and withholdings made subsequent to February 8, 1955.

**LOCAL LODGE No. 1424, INTERNATIONAL
ASSOCIATION OF MACHINISTS, AFL-CIO
(Labor Organization)**

Dated _____ By _____
(Representative) (Title)
INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days for the date hereof, and must not be altered, defaced, or covered by any other material.

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D-614

119 NLRB No. 59

Reading and Hillsdale, Michigan

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 7-CA-1303

BRYAN MANUFACTURING COMPANY

and

MARYALICE MEAD, *an Individual*

Case No. 7-CB-280

LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO (Bryan Manufacturing Company)

and

MARYALICE MEAD, *an Individual*

Decision and Order

On April 17, 1956, Trial Examiner Earl S. Bellman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Company and the Respondent Unions had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the General Counsel, the Respondent Company, and the Respondent Unions filed exceptions to the Intermediate Report and supporting briefs.¹

The Board has reviewed the rulings made by the Trial

¹ The Respondent Company requested oral argument. The request is hereby denied because the record, the exceptions and the briefs adequately present the issues and the positions of the parties.

Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs,² and the entire record in the case.³

² The Respondent Unions have moved to correct certain errors appearing in the brief in support of their exceptions to the Intermediate Report. No party has opposed the motion. Accordingly, we hereby grant the motion and correct the brief as requested.

³ After the issuance of the Intermediate Report the Respondent Unions submitted a "Motion to Reopen Record and Adduce Additional Testimony," dated May 29, 1956. The Respondent Unions claim newly discovered evidence to support their contention that the charging party, Maryalice Mead, was fronting for a non-complying union, Local 701, International Union, United Automobile, Aircraft & Agricultural Implement (Continued)

³ (Continued) Workers of America, AFL-CIO, at the time she filed the charge against the Respondent Unions and the amended charge against the Respondent Company. The General Counsel filed an answer, dated June 7, 1956, opposing the motion. The Respondent Unions contend that the alleged newly discovered evidence would show that Local 701, UAW-AFL-CIO, has engaged in organizational activities at the Respondent Company's Reading and Hillsdale, Michigan, plants before and since the issuance of the Intermediate Report in this case. We reject the Respondent Unions' argument in support of their motion that the Trial Examiner was "influenced (in) his decision on the fronting issue" by a discontinuance of organizational activity by Local 701, UAW-AFL-CIO, about August 1954, because close examination of the Intermediate Report shows that the Examiner was merely noting that circumstance in reporting the facts on the fronting issue. We adopt the Trial Examiner's finding "that, in giving advice and assistance which was sought by Mead and other employees, President Salomon (of Local 701, UAW-AFL-CIO) was actually functioning as an individual, rather than on behalf of Local 701." Cf. *N.L.R.B. v. Augusta Chemical Co.*, 187 F. 2d 63 (C.A. 5). Accordingly, any alleged organizational activities by Local 701, UAW-AFL-CIO, are irrelevant to the fronting issue, and we hereby deny the Respondent Unions' motion to reopen the record.

and hereby adopts, with minor corrections⁴ and modifications,⁵ the findings, conclusions, and recommendations of the Trial Examiner.

1. The Respondents have moved to dismiss the complaint on the ground, *inter alia*, that the Board is barred from making an unfair labor

* We make the following corrections of inadvertent errors appearing in the Intermediate Report which do not, however, affect the Trial Examiner's ultimate conclusions.

Dorothy Sarles rather than Frances Peters "was positive no vote had been taken to approve the agreement [dated August 10, 1954] because of the fact that after she had thought it over she wondered why there had not been such a vote."

Schwartzmiller rather than Schaffer told the 5 second shift employees on the afternoon of August 16, 1954, at the meeting in Westbrook's office, that they "might just as well be among the first to sign the cards."

William Jack rather than Joseph Smith heard Salomon make various statements at 2 meetings of the Respondent Company's employees such as Salomon was not there "representing anybody, but just as an individual trying to give Maryalice [Mead] some help," and that "Maryalice had come to him for help."

5 We do not adopt, or find it necessary to pass upon, the following statements of the Trial Examiner:

That the Respondent Unions' failed to establish the service of 2 *subpoenae duces tecum* upon Schwartzmiller, the Respondent Union's representative.

That the Respondent Unions' failure to comply with the subpoenas served upon them did not warrant an adverse inference.

That at the time Schwartzmiller signed the basic agreement dated August 10, 1954, and the employees' Temporary Bargaining Committee signed the wage supplement thereto the Respondent Company's vice president Westbrook "was given the impression that the employees had registered their approval of the provisions thereupon being signed."

That the General Counsel's offer of proof pertaining to the fronting issue in this case assumed that "Mead had originally been fronting for Local 701, [UAW-AFL-CIO] when she filed the first of her charges."

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practice finding by Section 10 (b) of the Act.⁶ In summary, these are the facts pertinent to the issue raised by the Respondents' 10 (b) contention: The Respondents executed a collective bargaining contract about August 10, 1954, containing a union security clause. The Respondents twice supplemented that basic agreement, the second time about September 2, 1954. The initial charge against the Respondent Company was filed on June 9, 1955. That charge was supplemented on August 5, 1955, on which date the charge against the Respondent Unions was also filed. The Respondents executed a renewal agreement on August 30, 1955. Upon these facts the complaint alleges that the Respondent Company violated Section 8 (a) (1), (2), and (3) and the Respondent Unions Section 8 (b) (1) (A) and (2) by maintaining in effect the August 10, 1954 agreement within 6 months of the time of filing the charges and by executing and maintaining the August 30, 1955 contract. The Respondents argue that they did not engage in any conduct within 6 months of the filing of the charges that constituted an unfair labor practice and that the complaints should, therefore, be dismissed.

The Trial Examiner found that, when the Respondents signed the August 10, 1954 contract with its union security clause, the Respondent Unions were not the majority representative of the employees covered by the agreement, and therefore that the union security clause was unlawful because it was not executed in conformity with the proviso

⁶ The portion of Section 10 (b) relied upon by the Respondents reads, "Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made"

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to Section 8 (a) (3) of the Act.⁷ In the Examiner's opinion, the failure to comply with the

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requirements of the Section 8 (a) (3) proviso rendered the contract void *ab initio*, and, although he was precluded from finding the execution of the contract unlawful, he was not barred from finding unlawful the enforcement or maintenance of the contract within the 6 months period preceding the filing of the charge. Inasmuch as the contract was maintained during that crucial 6 months period before the charge was filed, the Trial Examiner found that the Respondents thereby violated the Act. The Trial Examiner also found that such unlawful action by the Respondents was perpetuated by the execution and maintenance of the subsequent 1955 contract. Accordingly, he rejected the defense based upon Section 10 (b).

Like the Trial Examiner, we reject the Respondents' contention that Section 10 (b) is applicable to the facts of this case. Section 10 (b) is a statute of limitations

7 "Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made; and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h), and (ii) unless following an election held as provided in section 9 (e) (Continued)

7 (Continued) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement."

8 *N.L.R.B. v. A. E. Nettleton Co., et al*, 241 F. 2d 130 (C.A. 2); *N.L.R.B. v. Hasca Cotton Mfg. Co.*, 179 F. 2d 504 (C.A. 5).

and not, as the Respondents contend, a rule of evidence.⁹ It bars the Board from finding that an unfair labor practice alleged to have occurred more than 6 months before the filing of a charge is a violation of the Act, but it does not bar the receipt of evidence, antedating the critical period, which may be relevant in determining whether conduct within the 6 months period was unlawful.¹⁰ Thus, where employees, within 6 months of the filing of a charge, were laid off pursuant to a discriminatory seniority list adopted more than 6 months before that date, the Board considered the circumstances surrounding the establishment of the list and found the layoffs discriminatory—even though the Board was barred by Section 10 (b) from finding that the compilation of the list was a violation of the Act.¹¹

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Similarly, although the Board decided that it could not find that the establishment of an employment blacklist against a named employee was unlawful because of Section 10 (b), it did find that the continued application of the blacklist within the critical 6 months period was unlawful.¹²

⁹ *Arelson Manufacturing Company*, 88 NLRB 761, 766.

¹⁰ *Ibid.*

¹¹ *Potlatch Forests, Inc.*, 87 NLRB 1193, enforcement denied on grounds not relevant here, 189 F.2d 82 (C.A. 9); see also *N.L.R.B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al. (Pacific Intermountain Express Co.)*, 225 F. 2d 343, 345 (C.A. 8).

¹² *Local Union 1418, General Longshore Workers, International Longshoremen's Association, AFL (Lykes Brothers Steamship Co.)*, 102 NLRB 720, aff'd, 212 F. 2d 846 (C.A. 5). See also *N.L.R.B. v. Dallas General Drivers, Warehousemen and Helpers, Local Union 745, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (North East Texas Motor Lines, Inc.)*, 228 F. 2d 702 (C.A. 5), wherein the Court stated, "Moreover, if the contract provisions giving the union sole power to settle seniority disputes violated the Act, or if the Union exercised that power discriminatorily, each time it did so constituted a separate and distinct act, whether or not the decision so to act was made outside the six-month period."

(1505)

These cases reveal the fallacy in the Respondents' Section 10 (b) contention which is based on the erroneous proposition that their 1954 contract violated the Act, if at all, only at the precise moment it was signed. The cases establish that, when parties agree to a union security arrangement which does not conform to the requirements of the proviso to Section 8 (a) (3), they violate the Act not only when they agree to the arrangement but every day that they continue the unlawful arrangement in effect. Indeed, adoption of the Respondents' contention would permit an employer and a union to enter into an unlawful arrangement before a plant started operating which they could then enforce with impunity 6 months after executing the agreement.

Moreover, we can perceive no difference in illegality between a contract unlawful on its face, that is, one prescribing a form of union security prohibited by the Statute, and a contract invalid because certain requisites to the making of a valid contract have not been complied with. In both instances the invalidity begins at a point in time and continues so long as the unlawful contract remains in effect. The only difference between the 2 situations goes to the manner of proving illegality. In the one type of case the contract itself establishes the invalidity; in the other the invalidity is proved by reference to the facts surrounding the execution of the contract. In the latter instance, resort may be necessary to events which

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occurred more than 6 months before a charge was filed. However, because Section 10 (b), as noted above, is not a rule of evidence, the facts on the execution of the contract are fully admissible. In accordance with these principles, the Board has held that, although the execution of an otherwise lawful union security contract made with a

minority union could not be the basis of an unfair labor practice finding because of Section 10 (b),¹³ the contract could not serve as a defense to the discharge of an employee pursuant to the contract within 6 months of the filing of the charge.¹⁴ In another instance,¹⁵ the Board found that 2d 719 (C.A. 2), aff'd 347 U.S. 17.

a union security clause was unlawful because it had not been authorized by employees pursuant to an election conducted under the then existing Section 9 (e) of the Act.¹⁶ In making this finding, the Board rejected a defense that Section 10 (b) barred consideration of the legality of the contract which had been executed more than 6 months before the unfair labor practice charge had been filed. The Court of Appeals sustained the Board ruling as follows:¹⁷

As to the charge of illegality concerning the 1948 contract, we agree that, so long as the contract continued in force, if actually illegal, a continuing offense was being committed by the employer. Since the contract was still in force at the time of filing [of the charge], the six months' limitation period of Section 10 (b) had not even begun to operate.

Accordingly, we find that the legality of the Respondents' conduct in maintaining the 1954 and 1955 union security contracts, and in signing the 1955 agreement, must be considered in the light of the evidence surrounding the execution of the 1954 agreement.

¹³ The contract provided for a closed shop but was lawful on its face under Section 162 of the Act.

¹⁴ *Guy F. Atkinson Co., a Corporation, et al.*, 90 NLRB 143, enforcement denied on grounds not relevant here, 195 F. 2d 131 (C.A. 9).

¹⁵ *Gaynor News Company, Inc.*, 93 NLRB 299, aff'd in this regard 197 F.

¹⁶ The Section 9 (e) election procedure was deleted by the 1951 amendment to the Act.

¹⁷ *N.L.R.B. v. Gaynor News Company, Inc.*, 197 F. 2d 719, 722 (C.A. 2), aff'd 347 U.S. 17.

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2. The Respondents except to the Trial Examiner's finding that the General Counsel established *prima facie* that the Respondent Unions did not represent a majority of the employees covered by the August 1954 collective

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bargaining contract at the time it was signed. The Respondents contend that the General Counsel was obliged to, but did not, adduce supporting testimony from more than half the approximately 150 employees working for the Respondent Company at the time of the signing in order to establish a *prima facie* case that the Respondent Unions did not represent a majority of the Respondent Company's employees. There is no merit in this contention.

In deciding whether the General Counsel has established a *prima facie* case of lack of majority representation by a contracting union at a time a contract is signed, the Board relies "not on the basis of the Trial examiner's computation of the number of the employees in the appropriate unit but rather on all the facts and circumstances surrounding the execution of the agreement in question which reveal that the Respondent Union did not enjoy majority status at that time."¹⁸ Indeed, the Board has held that the General Counsel established, *prima facie*, lack of majority by a contracting union upon evidence very like that in the instant case.¹⁹ In that case less than a majority testified that they had not joined the contracting union. Nevertheless, the Board was satisfied, on the basis of all the evidence, that a *prima facie* case of lack of majority representation had been established. Moreover, as the General Counsel did establish a *prima facie* case herein, it became incumbent upon the Respondent to come forward

¹⁸ *Hibbard Dowel Co.*, 113 NLRB 28.

¹⁹ *International Metal Products Company*, 104 NLRB 1076.

with evidence to refute that showing.²⁰ This the Respondent did not do.

Accordingly, we adopt the Trial Examiner's finding that at the time the Respondents executed the August 1954 agreement the Respondent Unions did not represent a majority of the employees covered by the agreement. It follows therefore, and we find, in agreement with the Trial Examiner, that the Respondent Company violated Section 8 (a) (1), (2), and (3) and the Respondent Unions 8 (b) (1) (A) and (2) by maintaining in effect the 1954 agreement and by executing and maintaining in effect the 1955 agreement, both of which contained unlawful union security clauses.

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Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. The Respondent Company, Bryan Manufacturing Company, Reading and Hillsdale, Michigan, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in Local Lodge No. 1424, International Association of Machinists, AFL-CIO, and or International Association of Machinists, AFL-CIO, or any other labor organization, by entering into, maintaining or renewing any agreement which requires its employees to join, or to maintain their membership in, such labor organizations as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act;

²⁰ *Ibid.*

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(b) Recognizing Local Lodge No. 1424, International Association of Machinists, AFL-CIO and/or International Association of Machinists, AFL-CIO, or any successor to either of them, as the collective bargaining representative of its employees for the purpose of dealing with the Respondent Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Local Lodge No. 1424, International Association of Machinists, AFL-CIO and/or International Association of Machinists, AFL-CIO, or any successor to either of them, shall have been certified by the Board as the bargaining representative of such employees;

(c) Performing or giving effect to the agreements of August 10, 1954 and August 30, 1955, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with Local Lodge No. 1424, International Association of Machinists, AFL-CIO and/or International Association of Machinists, AFL-CIO relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Local Lodge No. 1424, International Association of Machinists, AFL-CIO and/or

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International Association of Machinists, AFL-CIO shall have been certified by the Board, provided, however, that nothing herein shall be construed to require the Respondent Company to vary any substantive provisions of such agreements, or to prejudice the assertion by its employees of any rights they may have thereunder:

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join or assist

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8°(a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Local Lodge No. 1424, International Association of Machinists, AFL-CIO and International Association of Machinists, AFL-CIO as their representative of any of its employees for the purpose of dealing with the Respondent Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other conditions of employment, unless and until Local Lodge No. 1424, International Association of Machinists, AFL-CIO and/or International Association of Machinists, AFL-CIO, shall have been certified by the Board as such representative;

(b) Post at its plants in Reading and Hillsdale, Michigan, copies of the notices attached hereto and marked "Appendix A" and "Appendix B."²¹ Copies of said notices, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the Respondents'

²¹ In the event this Order is enforced by a decree of the United States Court of Appeals, the notices shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(1510)

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respective representatives, be posted by the Respondent Company immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Seventh Region, in writing, within ten (10) days from the date of this Order, as to the steps the Respondent Company has taken to comply herewith.

II. The Respondent Unions, Local Lodge No. 1424, International Association of Machinists, AFL-CIO, and International Association of Machinists, AFL-CIO, their respective officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Bryan Manufacturing Company to discriminate against employees in violation of Section 8 (a) (3) of the Act by entering into, maintaining or renewing any agreement with Bryan Manufacturing Company which requires employees to join, or maintain their membership in, Local Lodge No. 1424, International Association of Machinists, AFL-CIO and/or International Association of Machinists, AFL-CIO as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act;

(b) In any like or related manner restraining or coercing employees of Bryan Manufacturing Company in the exercise of the rights guaranteed in Section 7 of the Act.

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2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at all of their business offices and quarters servicing or used by members of Local Lodge No. 1424, International Association of Machinists, AFL-CIO, copies of the notice attached hereto and marked "Appendix B."²² Copies of said notice, to be furnished by the Regional Director

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for the Seventh Region, shall, after being duly signed by authorized representatives of both the Respondent Unions, be posted by the Respondent Unions immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members of Local Lodge No. 1424, International Association of Machinists, AFL-CIO, are customarily posted. Reasonable steps shall be taken by the Respondent Unions to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail to the Regional Director for the Seventh Region signed copies of the notice marked "Appendix B" for posting at the Bryan Manufacturing Company's Reading and Hillsdale, Michigan, plants in places where notices to employees are customarily posted, for a period of sixty (60) consecutive days thereafter. Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by authorized representatives of both the Respondent Unions, be forthwith returned to the said Regional Director for such posting;

(c) Notify the Regional Director for the Seventh Region, in writing, within ten (10) days from the date of this Order,

²² See note 21.

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as to the steps the Respondent Unions have taken to comply herewith.

III. The Respondent Company, Bryan Manufacturing Company, its officers, agents, successors and assigns, and the Respondent Unions, Local Lodge No. 1424, International Association of Machinists, AFL-CIO, and International Association of Machinists, AFL-CIO, their respective officers, representatives, agents, successors and assigns shall cease and desist from giving effect to any checkoff cards heretofore executed by the employees of the Respondent Company authorizing the deduction of initiation fees and/or periodic dues from their wages for remittance to the Respondent Unions, and they shall jointly and severally²³ reimburse the employees and the former employees of

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the Respondent Company whose initiation fees and/or dues in the Respondent Unions have been checked off pursuant to any agreement between the Respondents for the amounts deducted from the employees' earnings, beginning with the applicable 6-month period.

Dated, Washington, D. C., Nov. 18, 1957.

Philip Ray Rodgers, Member
Stephen S. Bean, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

²³ The Respondent Company excepts to the Trial Examiner's recommendation that the Respondent Company be held jointly responsible for reimbursement of monies unlawfully collected from the employees. This Order adopts the Trial Examiner's recommendation. *Charles W. Carter Co.—Los Angeles, et al.*, 115 NLRB 251; *Hibbard Dorel Co.*, *supra*.

JOSEPH ALTON JENKINS, MEMBER, Concurring:

I agree that, by maintaining in effect the 1954 agreement and by executing and maintaining in effect the 1955 agreement, the Respondent Company violated Section 8 (a) (1), (2), and (3) and the Respondent Unions violated Section 8 (b) (1) (A) and (2) of the Act. I not only agree that Section 10 (b) does not preclude such a finding but, for the additional reasons hereinafter stated, I find 10 (b) not applicable where the validity of a currently maintained union-security clause is at issue. Union-security clauses authorized by the proviso clause of Section 8 (a) (3) are in derogation of the rights guaranteed employees in the definitive statement of national policy contained in Section 7. That section emancipates employees from coercion and restraint by labor and management alike. Their right to engage in or refrain from concerted activity at their own election has been enacted into law. But while that section enacted into law their right to engage in or refrain from concerted activities at their election, the proviso clause allows a contractual compulsion of union membership and thus restricts the free choice otherwise provided by Sections 7 and 8 (a) (3). The authority so conferred by the proviso is, however, carefully circumscribed by conditions precedent to and by limits upon its exercise. As an exception to declared public policy, a union-security clause, the conditions under which it was executed, and action pursuant to it, merit, when subject to dispute, strict scrutiny. My colleagues with whom I concur in result agree that when the clause is attacked by the General Counsel as void *ab initio* we may test the legality of its inception regardless of 10 (b) since the coercion imposed is continuous. My colleagues charge the General Counsel, however, with the burden of proving the faint or defect which renders it

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unlawful. I disagree. When the General Counsel attacks the clause and, by derivation, the contract as violative of the Act I believe the clause itself establishes his *prima facie* case and the burden of proving compliance with the conditions of the statute becomes the Respondent's.

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Since my thinking on this point is so fundamentally at variance with that of all my colleagues and because I believe the question to be one of grave import to an effective administration of the Act, I feel obligated to cite the precedents and decisions upon which my conclusion is premised. I have attempted a brief history of judicial construction of the 8 (a) (3) proviso and a brief review of the law of evidence as it relates to statutory exceptions in general. The cases are authoritative, they are in point, and I believe they are binding upon us.

As I have stated, the proviso in Section 8 (a) (3) is in the nature of an exception to the section which forbids any discrimination to encourage or discourage Union membership. The Supreme Court in *N.L.R.B. v. Electric Vacuum*, 315 U. S. 685,²⁴ stated:

The provision for a closed shop, as permitted by Sec. 8 (3) follows grammatically a prohibition of discrimination in hiring. These words of the *exception* must have been carefully chosen to express the precise nature and limits of permissible employer activity in union organization. (Emphasis supplied).

The general rule concerning exceptions is that the burden rests upon the party who asserts the exception to prove *all* the facts necessary to bring himself within such exception

²⁴ See also *Don Juan, Inc.*, 178 F. 2d. 625, 627 (C. A. 2). (In each case, the Court was construing the proviso of Section 8 (3). The later amendments to the substance of the clause do not, of course, affect the question at issue here, i.e., the burden of proving compliance with the conditions of the proviso.)

or exemption.²⁵ The history of the rule is too long and well-established²⁶ to permit departure absent a clear and convincing intent implicit in the words of the statute. No such intent is evident in the proviso of Section 8 (a) (3) which employs the customary language of all provisos. Although I agree with my colleagues in affirming the Trial Examiner and in rejecting the contention that our findings are barred by 10 (b), I believe we should not refrain from

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reaffirming so fundamentally a principle of evidentiary proof lest we lend color to a future claim of precedent. In *Savierre v. Central Allagracia*, 217 U. S. 502, 507; Justice Holmes²⁷ stated:

The only real question concerns the burden of proof and the propriety of relief in such a case as this.

As to the burden of proof, if that in any way determined the result, the ruling was correct. The appellants were seeking to escape from the contract made by them on the ground of a condition subsequent embodied in a proviso. It was for them to show that the facts of the condition had come to pass. So there is nothing but the general question to be considered and that is answered by the statement of it and by the repeated decisions of this Court. *When a proviso like this carves an exception out of the body of a statute or contract, those who set up such exception must prove it.* (Emphasis supplied). *Schlemmer v. Buffalo, Rochester, etc., Ry.*, 205 U. S. 1, 10; *Ryan v. Carter*, 93 U. S. 78; *United States v. Cook*, 17, Wall. 168; *United States v. Dickson*, 15 Pet. 141, 165.

²⁵ 20 AM Jurisprudence—Sec. 142.

²⁶ See *United States v. Cook*, 17 Wall. 168, 176 (Dec. 1872).

²⁷ See also Justice Holmes in *Schlemmer v. Buffalo, Rochester & Pittsburgh Ry.*, 205 U. S. 1, 10.

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I feel no need to dwell on the technical distinction between a proviso and an exception.²⁸ In practice the distinction is disregarded. The enacting clause of Section 8 (a) (3) provides:

Sec. 8 (a) It shall be an unfair labor practice for an employer—(3)²⁹ by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

The proviso to this clause is a true proviso which enables an employer to defeat the enacting clause only by defense or excuse which must be pleaded and proved. The General Counsel who asserts the violation of Section 8 (a) (3) does not have to negative any exception as there is none contained in the enacting clause of that section. He may then state his case in the words of the enacting clause and it will be prima facie sufficient.³⁰

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In *N.L.R.B. v. Masor Mfg. Co.*, 126 F. 2d 810 (C.A. 9), the Court held that the party pleading the validity of the closed shop under Section 8 (3) of the Wagner Act carried the burden of proof.³¹

The Court stated, page 813:

In this case, the burden of proving the closed shop agreement was on the respondent. It would be a sufficient disposition to find that respondent cannot rely on such an agreement because, as the evidence discloses, it had not shown either (a) that it was made with A.F.L. Local 15, at the time agent of a majority

²⁸ McKinney—Statutes and Statutory Construction—Sec. 119.

²⁹ Id.

³⁰ See also *N.L.R.B. v. Engelhorn & Sons*, 134 F. 2d 553 (C. A. 3).

of the respondent's upholsterers by specific designation of each upholsterer or (b) that Local 15 was a union constituted to be an agent for its members to bargain for a closed shop, and that mere membership of respondent's upholsterers created the agency for that purpose. However, the case before the Board was disposed of on other grounds.

The Board has likewise reached a similar conclusion by the same reasoning with respect to the proviso to 8 (a) (3). In *Construction and General Laborers Union*, 96 NLRB 118, it stated:

However, we do not agree with the Trial Examiner that it was necessary for the disposition of this case to ascertain the precise reason for the respondents' action in suspending Fellows and Wilson as members in good standing. Under the Act, such reasons would be relevant only if there were in existence a valid union-security agreement, and the discharges were alleged to have been made pursuant to such agreement. Recognizing this, the Trial Examiner found, and we agree, that there was in fact no such contract in existence at the time of the discharges in this case, and that the discharges were therefore illegal regardless of the reasons for the Respondents' suspension of the discharges. However, he deemed himself precluded from disposing of the case on this ground because of the failure of the General Counsel to allege the non-existence of such a contract. *We do not agree with this view insofar as it implies that the burden is on the General Counsel, in a case of this sort, to allege the non-existence of a valid union-shop contract. The burden is rather properly on the respondent in such a case to plead the existence of such a contract and that the discharges were made pursuant thereto. (Emphasis supplied).*

It therefore appears that the Board has already decided the evidentiary issue herein involved in the direct, unequivocal language set forth *supra*.³¹ It has followed Justice Holmes and the judicial history of the burden of proof with respect to proviso clauses. I see no reason not to affirm our adherence to established law. I would point out that in recent testimony before the Senate Select Committee on Improper Activity in the Labor or Management Field the testimony of a more vicious practice was adduced than that by which labor organizations and management collude, through the device of the union-security agreement, to impose a union shop upon employees who have never designated the labor organization as their bargaining representative.³² By means of this device the employees are foreclosed of all the rights guaranteed by Section 7, management reaps the fruits of a contract with minimal or nominal benefits to the employees, and the labor organization collects dues and initiation fees (under penalty of discharge) with no pretense of genuine representation of the interest of the employees. I think we are obliged to clarify for the benefit of the charging parties the burden of proof they are required to sustain should any of such employees seek redress.

The General Counsel has alleged and proven a contract between the Respondents which violates Section 8 (a) (3) unless it conforms to the proviso therein. The Respondents have offered no proof that the contract met the conditions specified in that Section which remove it from the area of statutory inhibition. I therefore find that the maintenance

³¹ See also *Union Starch and Refining Co.*, 87 NLRB 779, 784, 70-12, 608 F. Atkinson, 90 NLRB 143; *Colgate Palmolive-Peet Co. v. N.L.R.B.*, 338 U.S. 355; *N.L.R.B. v. Conell Portland Cement Co.*, 148 F. 2d 237 (C.A. 9); *Walton Corporation v. N.L.R.B.*, 323 U.S. 248.

³² See Labor Relations Reporter, issues of August 5, 12, 19 and 26, 1957.

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and enforcement of said contract since December 10, 1954, by said Respondent Company and Respondent Unions violated Sections 8 (a) (1), (2) and (3) and 8 (b) (1) (A) and (2) of the amended Act.

Dated, Washington, D. C., Nov. 18, 1957.

Joseph Alton Jenkins, Member
NATIONAL LABOR RELATIONS BOARD

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BOYD LEEDOM, CHAIRMAN, and ABE MURDOCK, MEMBER,
dissenting:

The issue at the threshold of this proceeding is whether the complaints are barred by the proviso to Section 10 (b) of the Act.

In August 1954, the Respondents entered into a collective bargaining agreement containing a union-security clause; in August 1955, they executed a renewal agreement. The charges initiating this proceeding were filed against the Respondent Company in June 1955, and against the Respondent Unions in August 1955. Based upon these charges the complaints, as amended at the hearing, allege that the Respondents violated Section 8 (a) (1), (2), and (3), and 8 (b) (1) (A) and (2), respectively, by maintaining in effect the union-security clause in the August 1954 agreement within 6 months of the time of the filing of the charges, and by executing and maintaining the August 1955 agreement containing a union-security clause. These union-security clauses were asserted to be unlawful for the sole reason that, at the time the August 1954 agreement was executed, the Respondent Unions allegedly did not represent a majority of the employees covered by that agreement.

It is clear, as our colleagues agree, that Section 10 (b) bars a finding that by executing that agreement, assuming

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a lack of majority, the Respondents have engaged in unfair labor practices. It is also clear, as our colleagues agree, that a determination that the Respondents have engaged in unfair labor practices by maintaining the August 1954 agreement within 6 months of the filing of the charges and by executing and maintaining the August 1955 agreement, necessarily depends upon a determination that the Respondent Unions were not the majority representative in August 1954. Thus, it is apparent that in substance the allegations of the complaints herein are based upon unfair labor practices occurring more than 6 months before the filing of the charges, and a finding of unfair labor practices based on such complaints must necessarily give controlling weight to events which occurred more than 6 months before the filing of the charges. Such a result is clearly prohibited

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by the Section 10 (b) proviso.

Our colleagues have concluded, despite the clear mandate of Section 10 (b) which requires that these complaints be dismissed, that they are supported by valid charges. They reach this conclusion because they fail to distinguish between union-security agreements which are unlawful because they prescribe a form of union security prohibited by the Act and union-security agreements which are unlawful by reason of a failure to conform to the statutory requirements for the execution of a lawful agreement; because of this misapprehension, they have misapplied the well established principle that Section 10 (b) is a statute of limitations with respect to findings of unfair labor practices, and not a rule of evidence.

Our colleagues say that in both types of situations involving unlawful union-security agreements, the invalidity

³ E. g., *New Printing Co., Inc.*, 116 NLRB 219; *Universal Oil Products Company*, 108 NLRB 68.

begins at a point in time and continues to exist while the agreement remains in effect, the distinction between the two types being in the manner of proving illegality. However, this approach seems to overlook the further distinction that stems from the reasons for the invalidity of the two types of agreements. Thus, in the first type of situation, where the reason for the invalidity lies in the language of the agreement, the circumstances which cause the agreement to be invalid not only existed at the point of time in the past when the agreement was executed, but continue to exist as a present reason for invalidity each day that the agreement continues in effect. Although the continued invalidity of the agreement may therefore in a sense be related to its initial invalidity, such continued invalidity is not based solely on the initial invalidity but has a continuing independent basis. For this reason, the unfair labor practices involved in the maintenance of such an agreement may be established merely by proof of maintenance at any point of time, without reference to the circumstances surrounding its execution. Consequently, the fact that the charges may have

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been filed more than 6 months after the execution of such an agreement can have no effect on the Board's power to find, based upon evidence as to the maintenance of the agreement within 6 months of the filing of the charges, that such maintenance was an unfair labor practice.

On the other hand, in the second type of situation involved herein, where the reason for the invalidity assertedly lies in a failure in executing the agreement to comply with some or all of the requisites for making a valid union-security agreement, the circumstances which cause the agreement to be invalid existed only at the point in time in the past when the agreement was executed and are not thereafter repeated. For this reason, therefore, the con-

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tinuing invalidity of the agreement is directly related to and is based solely on its initial invalidity, and has no continuing independent basis. Accordingly, although an agreement invalid in its inception may continue to be invalid throughout its life, the fact of its invalidity and the consequent existence of unfair labor practices cannot be established merely by proof that the agreement was being maintained at some point in time subsequent to its execution, but can only be established by proof of the facts surrounding its execution in the past, which created the initial invalidity. When as here, therefore, the charges are filed more than 6 months after the execution of the agreement, proof of its invalidity and the consequent unfair labor practices can only be established by reliance on evidence of events which occurred more than 6 months before the filing of the charge. This Congress expressly precluded by Section 10 (b).

It is well established that in making unfair labor practice findings the Board cannot rely solely on events which occurred more than 6 months before the filing of the charges, even though evidence as to such events is admissible for background purposes; and this is so even though the effect of such events continues to be felt within the 6-month period. Thus, Section 10 (b) has been held to bar findings of unlawful discrimination when the only evidence bearing on the issue of unlawful motivation for failure to grant a wage increase within 6 months of the filing of the charge concerned events which

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had occurred more than 6 months before such filing, there being no evidence that any previously existing unlawful motivation continued to exist;³⁴ when a lay-off during an

³⁴ *News Printing Co., Inc.*, *supra*, decided by a unanimous Board including Members Rodgers and Bean.

economic reduction in force within 6 months of the filing of the charge was made in accordance with a seniority status which had been established more than 6 months before such filing for allegedly unlawful reasons;³⁵ when replaced strikers, who made application for reinstatement within 6 months of the filing of the charge, could be found to be unfair labor practice strikers entitled to reinstatement despite replacement only on the basis of a finding that the respondent had engaged in unfair labor practices by unlawfully refusing to bargain more than 6 months before the filing of the charge;³⁶ and when an application for reinstatement made within 6 months of the filing of the charge could be found to have been unlawfully rejected only on the basis of a finding that a discharge made before the beginning of the 6-month period was discriminatory.³⁷ Further, in situations strikingly analogous to that present here, Section 10 (b) has been held to bar a finding of domination of a labor organization when the allegedly dominated organization, like the contract here, continued to exist within 6 months of the filing of the charges and within that period to affect the exercise by the employees of their rights under the Act, but the crucial events upon which any findings of unfair labor practices must necessarily be predicated occurred, as here, more than 6 months before the charges were filed.³⁸ Moreover, as the alleged violations in these cited cases were not "continuing" in nature, evidence admitted for background purposes could not con-

³⁵ *Bowen Products Corporation*, 113 NLRB 731.

³⁶ *Greenville Cotton Oil Company*, 92 NLRB 1033, petition to set aside denied sub nom. *American Federation of Grain Millers, A.F. of L., v. N.L.R.B.*, 197 F. 2d 451 (C.A. 5).

³⁷ *N.L.R.B. v. Pennwood, Inc.*, 194 F. 2d 521, at 523-525 (C.A. 3); see also *N. L. R. B. v. Childs Company*, 195 F. 2d 617 (C.A. 2).

³⁸ *Universal Oil Products Company*, *supra*, a decision in which Member Rodgers joined; *Armco Drainage & Metal Products, Inc.*, 106 NLRB 725, at 730-731; *Tennessee Knitting Mills, Inc.*, 88 NLRB 4103, at 4104-4105.

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vert a defective charge into a valid complaint. As the charges could not support the complaints in such cases, they cannot support

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the complaint here.³⁹ We note that our colleagues wholly ignore the cases cited in this paragraph, such as the *Bowen* case, which we believe decisive of the instant case.

In the cases relied upon by our colleagues, all of the operative facts necessary to the proof of the alleged unfair labor practices occurred or existed within 6 months of the filing of the charges; such cases are therefore not authority for the result reached by our colleagues here. As has previously been pointed out in the *Bowen Products* case, *supra*, the *Potlatch Forests*, *General Longshore Workers*, and *Pacific Intermountain* cases, are clearly distinguishable from the situation here. In *Potlatch* and *General Longshore Workers* the acts of discrimination, which occurred within the 6-month period preceding the filing of the charges, were based on unlawful policies which, although adopted before that period, also continued to exist and to be the motivating force within that period; moreover, although evidence of events antedating the 6-month period was introduced to show the origin of the motivation there was, unlike the *News Printing* case, *supra*, independent evidence, in each, of events within the 6-month period to establish the continuing existence of the unlawful motivation. Similarly, in the *Pacific Intermountain* case, the acts of discrimination which occurred within the 6-month period preceding the filing of the charges were the results of the application within that period of an agreement which,

³⁹ Compare *Axelson Manufacturing Company*, 88 NLRB 761, where the finding that the respondent had dominated the employee representation plan was based in part on the substantive provisions of the plan which, although adopted more than 6 months before the filing of the charge, continued to exist and to be implemented within that 6-month period.

unlike the agreement here, was held to be unlawful in its inception and to continue to be unlawful because of the nature of its substantive provisions.⁴⁰ In the *Atkinson* case, the unfair labor practice involved was an alleged discriminatory discharge for nonmembership in the union within 6 months of the filing of the charge, and the legality of the closed shop contract was placed in issue, not by the General Counsel as part of his affirmative case, but by the respondent as a matter of defense; because of the posture in which this issue arose,

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Section 10 (b) was deemed inapplicable.⁴¹ Moreover, as

⁴⁰ To the same effect is the quotation from the *Dallas General Drivers* case, footnote 12, *supra*, in which the Court also pointed without disagreement to the Board's conclusion in the *Bowen Products* case, *supra*, that the two situations were distinguishable.

⁴¹ In his separate opinion, Member Jenkins similarly relies on a group of cases in which, insofar as they pertain to the legality of union-security agreements under the Act, either the legality or existence of such an agreement was pertinent only as a defense, not having been placed in issue by the General Counsel as part of his affirmative case (i.e., *Don Juan, Inc.*, *supra*; *N.L.R.B. v. Mason Mfg. Co.*, *supra*; *Construction and General Laborers Union*, *supra*; and *Guy F. Atkinson*, *supra*), or the decision turned on questions of compliance with the requirements of the Section and not on questions of the burden of proof (i.e., *N.L.R.B. v. Electric Vacuum*, *supra*; *N.L.R.B. v. Englehorn & Sons*, *supra*; *Union Starch and Refining Co.*, *supra*; *Colgate-Palmolive-Peet Co.*, *v. N.L.R.B.*, *supra*; *N.L.R.B. v. Cowell Portland Cement Co.*, *supra*; and *Wallace Corporation v. N.L.R.B.*, *supra*). Such cases therefore do not support his assertion that the respondent has the burden of proving lawful execution of such a contract when, as here, the issue is raised by the General Counsel as part of his affirmative case and the substantive provisions of the contract do not exceed those permitted by the Act. Nor do they support his conclusion that Section 10 (b) is wholly inapplicable "where the validity of a currently maintained union-security clause is at issue", and Section 10 (b) itself contains no such exception to its broad inhibition applicable to allegations as to "any unfair labor practice."

Inasmuch as Member Jenkins' novel theory that all union security contracts are prima facie violative of Section 8 (a) (3), which is at variance with the view of the burden of proof which this Board has taken over the years, is not even espoused by the General Counsel nor adopted by the other two members of the majority, we believe it unnecessary to discuss it at greater length.

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a closed-shop contract is unlawful on its face under the amended Act, and its existence is therefore a continuing violation, the contract in the *Atkinson* case could have been a valid defense to a discharge for nonmembership in the union only if it were shown that it was exempted from the provisions of the amended Act by the savings provisions of Section 102.

With respect to the *Gaynor News* case, the Board held that under the doctrine of *Cathey Lumber Company*, 86 NLRB 157, the complaint as to the execution of the contract was supported by an original timely charge which did not mention the contract; the Board therefore did not consider the validity of the complaint with reference to the later charge which first specifically referred to the contract. Although the portion of the Court's opinion quoted by our colleagues speaks of a "continuing offense", it is not at all clear from the quoted language or its context in the opinion that the Court was relying on the later charge rather than agreeing with the Board that the complaint was supported by the original charge. Such ambiguous language is in our opinion a wholly insufficient basis for ignoring the clear distinction between agreements which are unlawful because of their

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substantive provisions and those which are unlawful because of defects in their execution.

Accordingly, as the validity of the contracts here in issue necessarily depends upon the validity of the execution of the August 1954 agreement, and as the charges initiating this proceeding were filed more than 6 months after that event, we would, contrary to our colleagues, find that the complaints herein are not supported by timely charges and must therefore be dismissed. If, as our colleagues suggest, the result which Section 10 (b) compels would frustrate

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prevention of certain unfair labor practices, only the Congress, and not this Board, is empowered to enact the necessary remedial legislation.

Dated, Washington, D.C., Nov. 18, 1957.

Boyd Leedom, Chairman

Abe Murdock, Member

NATIONAL LABOR RELATIONS BOARD

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APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT encourage membership in LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and/or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any other labor organization, by entering into, maintaining or renewing any agreement which requires our employees to join, or, maintain their membership in, such labor organizations as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act.

WE WILL NOT recognize LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and/or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any successor to either of them, as the collective bargaining representative of our employees for the purpose of dealing with us concerning grievances, labor

disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any successor to either of them, shall have been certified by the Board as the bargaining representative of our employees.

WE WILL NOT perform or give effect to the agreements of August 10, 1954 and/or August 30, 1955, or to any modification, extension, supplement, or renewal thereof, or understanding entered into with LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO and/or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and/or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO shall have been certified by the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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WE WILL withdraw and withhold all recognition from LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, as the representative of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other conditions of employment, unless and until LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO and/or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, shall have been certified by the Board as such representative.

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WE WILL refund to all our employees and former employees from whose wages we have deducted initiation fees and/or periodic dues for transmittal to LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, and or INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, the amount of such deductions and withholdings, and in accordance with the Board's direction.

BRYAN MANUFACTURING COMPANY
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, AND OF INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, AND TO ALL EMPLOYEES OF BRYAN MANUFACTURING COMPANY

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause BRYAN MANUFACTURING COMPANY to discriminate against its employees in violation of Section 8 (a) (3) of the Act by entering into, maintaining or renewing any agreement with BRYAN MANUFACTURING COMPANY which requires its employees to join, or maintain membership in, our labor organizations as a condition of employment; unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act:

WE WILL NOT in any like or related manner restrain or coerce the employees of BRYAN MANUFACTURING COMPANY in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL refund to all the employees and former employees of the BRYAN MANUFACTURING COMPANY from whose wages initiation fees and/or periodic dues have been deducted or withheld for trans-

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mittal to us the amount of such deductions and withholdings, and in accordance with the Board's direction.

**LOCAL LODGE NO. 1424, INTERNATIONAL
ASSOCIATION OF MACHINISTS, AFL-CIO**
(Labor Organization)

Dated By
(Representative) (Title)

**INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO**
(Labor Organization)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14257

No. 14324

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; AND INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, *Petitioners*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent* AND NA-
TIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

BRYAN MANUFACTURING COMPANY, *Respondent*.

Prehearing Conference Stipulation

Pursuant to Rule 38 (k) of the Rules of this Court, the parties, subject to the approval of this Court, hereby stipulate and agree as follows with respect to the issues and the procedure and dates for the filing of the briefs and joint appendix herein.

I. ISSUES

1. Whether the Board properly found that the Union did not represent a majority of the employees in the bargaining unit at the time the initial agreement was executed.

2. Whether the issuance of the complaint was barred by Section 10 (b) of the Act.

3. Whether the Board's order is valid and proper, including but not limited to the question whether the Company may be held jointly liable with the Union for reimbursing the employees for dues checked off pursuant to agreement between the Company and the Union.

II. DATES FOR FILING BRIEFS, DESIGNATIONS OF RECORD AND JOINT APPENDIX

1. The parties have agreed that petitioner Union's brief in No. 14,257 will be filed on or before April 30, 1958. Because the Unions and the Company take identical positions with respect to the primary issues here under review, the parties have agreed that the National Labor Relations Board, respondent in No. 14,257 and petitioner in No. 14,324, will file only a single brief covering both cases, and that such brief will be filed on or before May 30, 1958. Respondent Company's brief in No. 14,324 will be filed on or before June 30, 1958. Reply briefs, if any, will be filed on or before September 11, 1958.

2. It is agreed that on or before April 30, 1958, the Unions will furnish the Board and the Company with a statement of the portions of the record which the Unions propose to print in the joint appendix, and that a counter-designation of the additional portions of the record to be printed will be served by the Board on or before May 30, 1958, and by the Company on or before June 30, 1958. Any further designation which the Unions or the Board may desire will be furnished to the parties on or before July 10, 1958. Thereafter, on or before September 11, 1958, the joint appendix, to be printed by a printer mutually agreed upon, will be filed with the Court. Costs of printing, unless otherwise agreed upon, will be borne by each party in accordance with the portions of the record designated by each party.

3. It is further agreed that any party and the Court, in the briefs, and at and following the hearing in the case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed, or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a

supplemental joint appendix if the Court directs the same to be printed.

III. PROCEDURE FOR REFERRING TO RECORD IN PRINTING BRIEFS

In their respective briefs, the parties will not refer to the page numbers of the joint appendix (which will be centered at the bottom of the page), but instead will refer to those numbers which are centered in bold-type face in the body of the appendix and which also appear in brackets in the upper outside corner of each page. The bold-face numbers refer to the pages of the certified record filed with this Court and are shown in the index to that certified record.

February 25, 1958.

/s/ LOUIS P. POULTON

*Attorney for Local Lodge No. 1424 and
International Association of Machinists,
AFL-CIO*

February 25, 1958.

/s/ FRANK L. GALLUCCI

*Attorney for Bryun Manufacturing
Company*

February 25, 1958.

/s/ THOMAS J. McDERMOTT

*Associate General Counsel
National Labor Relations Board*

Order

Upon consideration of the prehearing stipulation submitted by the parties to the above cases, it is

ORDERED that the prehearing stipulation be approved and that the Clerk be, and he is hereby, directed to file said stipulation forthwith.

It is FURTHER ORDERED that the prehearing stipulation be printed in the joint appendix and shall control further proceedings in these cases unless modified by further order of this Court.

Dated: February 26, 1958.

[fol. 466]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14257

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; and INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 14324

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BRYAN MANUFACTURING COMPANY, Respondent.

On Petition to Review and Set Aside and on Petition to
Enforce an Order of the National Labor Relations Board

OPINION—Decided February 27, 1959

Mr. Bernard Dunau, with whom Mr. Plato E. Papps
was on the brief, for petitioners in No. 14257.

Mr. Frederick U. Reel, Attorney, National Labor Relations Board, with whom Messrs. Jerome D. Fenton, General Counsel, National Labor Relations Board, Thomas J. [fol. 467] Dermott, Associate General Counsel, National Labor Relations Board, Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, and William W. Watson, Attorney, National Labor Relations Board, were on the brief, for respondent in No. 14257 and petitioner in No. 14324.

Mr. Frank L. Gallucci, with whom Mr. Abraham Dobkin was on the brief, for respondent in No. 14324. Mr. Plato E. Papps also entered an appearance for respondent in No. 14324.

Before: Prettyman, Chief Judge, and Fahy and Burger, Circuit Judges.

BURGER, Circuit Judge: The Bryan Manufacturing Company (respondent in 14324), which then employed about 150 persons in its Reading, Michigan, plant, received a letter in July 1954 from the International Association of Machinists advising that the Machinists represented "a majority of the 'production and maintenance' employees of your company." The Machinists sought a collective bargaining agreement.

In the proceedings from which this appeal arises it was found by the Trial Examiner and the Labor Board that the Machinists did not in fact represent a majority of the company's employees at that time; and this finding of no majority is not challenged here¹. At the time the Company received the letter, Local 701, United Auto Workers, was engaged in organizing activities among Bryan employees at the Reading plant, but this was discontinued after the [fol. 468] Company signed a collective bargaining agreement with the Machinists.

On August 10, 1954, the Company signed a contract with the Machinists without first seeing or seeking any evidence that the Union represented a majority of its employees. No employee authorization cards were shown to management representatives, no election was held, and the Company made no independent inquiry as to the desires of its employees. The August 10, 1954 contract contained a conventional union shop clause and a dues checkoff provision.

On June 9, 1955, approximately ten months after the 1954 contract was signed, but two months before it was renewed

¹ At the hearing on the complaint, before the Trial Examiner thirteen persons employed at Reading when the contract was signed testified that they did not know or hear that the Machinists had interested themselves in organizing the plant until about a week after the contract was signed. It was stipulated that an additional thirteen employees would give similar testimony.

in a 1955 contract having the same union shop and dues checkoff provisions, one Maryalice Mead² filed a charge of unfair labor practices against the Machinists and the Company; on August 5, 1955, she filed supplemental charges.³ Each charge asserted the frustration of a free choice of the employees in the selection of a bargaining agent. On October 5, 1955, separate complaints were filed against the Union and the Company on the basis of these charges, and the complaints were consolidated for hearing and determination.

On August 30, 1955, the Union and the Company signed a new contract which included employees at an additional Bryan plant in a nearby town. Although the new contract had revised seniority provisions, was effective for a different term, and contained several other changes, it had a union shop clause and a dues checkoff provision identical to those in the 1954 contract.

[fol. 469] Between August 1954 and August 1955 the Company expanded its operation from 150 to 350 employees, and by November 1955 there were 480 persons covered by the contract. Each new employee hired was compelled to join the Machinists union within 45 days of being hired, and each signed an individual dues checkoff authorization. The Union does not challenge the finding that the identical union shop provisions in the 1954 and the 1955 contracts were enforced during the period pertinent here, and that the dues of every employee were checked off under the respective provisions.

The Union now seeks review and the Board enforcement of an order and finding that both the Union and the Company violated the Labor Act⁴ by maintaining and enforcing

² She was employed by Bryan at the Reading plant from November 1953 until October 1955.

³ The Board adopted the Trial Examiner's finding inter alia that, in the spring of 1955 "discontent at the Reading plant developed among employees who resented the way in which their right to self-determination had been thwarted when the IAM's [Machinists'] contract had literally been thrust upon them."

⁴ National Labor Relations Act §§ 8(a)(1)-(3), (b)(1), (2), 61 Stat. 140 (1947), 29 U.S.C. §§ 158(a)(1)-(3), (b)(1), (2).

the union shop provision³ and the dues checkoff agreement⁴ in the two contracts. The Board held that such enforcement was an unfair labor practice because the basic contract was formally executed at a time when the Union did not represent a majority of the Company's employees. The [fol. 470] primary issue presented on appeal is whether the Labor Act's statute of limitations⁵ bars the Board from finding that these acts, i.e., the enforcement of the union shop and the monthly checkoff of dues, were unfair labor practices.

Our scope of review is limited to determining whether there is substantial evidence in the record as a whole to support the Board's findings of fact, *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951), and whether the Board has applied the statute in "a just and reasoned manner." *Gray v. Powell*, 314 U.S. 402, 411 (1941). Having in mind this limited scope of review, we are constrained to uphold the Board's conclusion.

If the alleged violation were the mere signing of the original contract in 1954 as distinguished from continuing

³ "As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement."

⁴ "Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the employee's pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization."

"Deductions provided for above shall be remitted to the financial secretary of the Union no later than the tenth day of the month following the deduction. The Company shall furnish the financial secretary of the Union monthly pay record of those for whom deductions have been made. . . ."

National Labor Relations Act § 10(b), 61 Stat. 146 (1947), 29 U.S.C. § 160(b): "Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ."

and repeating its enforcement against employees, the Board's order would be invalid under § 10(b). It was rational, however, for the Labor Board to conclude that the violation charged was a continuing one, repeated anew each time the union security clause was enforced or dues checked off. Hence, the statutory period had not expired. *NLRB v. Gannett News Co.*, 197 F.2d 719 (2d Cir. 1952), *aff'd sub nom. Radio Officers' Union, AFL v. NLRB*, 347 U.S. 17 (1954); *Katz v. NLRB*, 196 F.2d 411 (9th Cir. 1952). New employees were affected by the contract as they were employed. Each month up to and including the month when the charge was served, dues were deducted from the wages of each employee of the company, including Maryalice Mead, who filed the charge. Thus the contract provisions had a positive impact which was repeated regularly from time to time as to each employee.⁸

[fol. 471] It is contended that § 10(b) prevents the Board from relying on events occurring more than six months prior to service of the charge in order to prove a violation. The union security clause and the dues checkoff provision here involved were proper on their face. Therefore in order to show the illegality of enforcing these agreements, the Board was compelled to look back more than six months in order to show that the Union did not represent a majority of employees when the contract was signed. According to the Union and the Company, the Board may not do this. This issue raises questions on which authority is limited and no cases are precisely or directly in point.

In *NLRB v. Gannett News Co.*, *supra*, the Second Circuit upheld a finding that it was a continuing violation for a company to enforce a union shop contract without first obtaining Board certification that a majority of employees had authorized such a contract. Under the then existing law no union shop contract was valid without such a certification.⁹ In the case before us the Union and the Company would distinguish the *Gannett News* case on the basis that there the absence of the required certificate was observable within the six-month period. There was no need in that

⁸National Labor Relations Act, § 8(a)(3). *Provided* (ii), 61 Stat. 140 (1947), subsequently amended by 65 Stat. 601 (1951), 29 U.S.C. § 158(a)(3). *Provided* (ii).

case, they point out, to go back beyond the statutory period to demonstrate the illegality of enforcing the union shop clause. *Cf. NLRB v. Carpenters Local 1028; AFL*, 232 F.2d 454 (10th Cir.), *cert. denied*, 352 U.S. 839 (1956). In the instant case no evidence from within the statutory period will serve to show *why* enforcement is illegal.

Section 10(b) is, however, a statute of limitations¹ and not a rule of evidence. *NLRB v. Clausen*, 188 F.2d 439, 443 (3d Cir.), *cert. denied*, 342 U.S. 868 (1951) (*dictum*). The established rule is that evidence of "transactions, which for some reason are barred from forming the basis for a suit, [fol. 472] may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny." *FTC v. Cement Institute*, 333 U.S. 683, 705 (1948). This rule is, of course, subject to the important qualification that testimony as to such barred events may be received only as background evidence and may not be given independent significance. See *Paramount Cap Mfg. Co. v. NLRB*, 260 F.2d 109 (8th Cir. 1958). Put in another way, there must be acts occurring within the six-month period of sufficient status to constitute the violation charged, and evidence of acts outside the period can be received only to illuminate and explain the events within the period.

This brings us to the crux of the case: was the fact that the union did not represent a majority of Bryan employees when the contract was signed of such independent significance that its use in evidence is barred by § 10(b) or does this fact, in these circumstances merely serve to illuminate and explain the subsequent enforcement of the contract—an occurrence taking place within the statutory period?

The Board did not find here that the formal *execution* of the 1954 contract with its union security clause and its dues checkoff provision violated the act. It found rather that maintenance and enforcement of the 1954 contract was an unfair labor practice and further that the signing of the 1955 contract also constituted a violation.² Since a ma-

¹ The Board adopted the Trial Examiner's finding "that the 1955 agreement is a modification and extension of the 1954 agreement." The Examiner reasoned in the alternative, however, that "even

majority of the Bryan employees were members of the Union [fol. 473] by the time the 1955 contract was signed, the illegality of the 1955 contract stems from the illegality of enforcing the 1954 contract for if enforcement of the 1954 contract was an unfair labor practice, the fact that the Union achieved majority status subsequent to its execution and as a direct result thereof does not remove the taint. Changes in status which result from unfair practices have been said by the Supreme Court not to affect the Board's power to restore the *status quo ante*. *Franks Bros. Co. v. NLRB*, 321 U.S. 702, (1944); see *Joy Silk Mills, Inc. v. NLRB*, 87 U.S.App.D.C. 360, 372, 185 F.2d 732, 744 (1950), *cert. denied*, 341 U.S. 914 (1951).

The Board takes the position that evidence of the Union's lack of status when the contract was signed is not in and of itself the basis for its legal conclusions, but is used only to illuminate subsequent events, namely contractually compelled union membership and dues checkoff, these being events which occurred within the six months prior to service of the charges. In this situation, that distinction would seem to have validity because the unfair practices involved are positive acts which are both continuing and repeated. Only where the violations are of this character, i.e., continuing and repeated, however, is it appropriate for the Board to rely on events outside the statutory period to establish a critical element of proof of the offense.

It seems to us this distinction is illustrated by *NLRB v. Pennwoven, Inc.*, 194 F.2d 521 (3d Cir. 1952), and *NLRB v. Childs Co.*, 195 F.2d 617 (2d Cir. 1952). Those cases hold

if the 1955 agreement were to be considered a new agreement between different parties, the fact remains that any majority claimed by the Local Lodge at the time the 1955 agreement was entered into, which rests on the checkoff authorizations then in effect and secured pursuant to the 1954 agreement, clearly would have no validity in establishing an unassisted majority, under the holding of the Board in *Oliver Mach. Corp.*, 102 N.L.R.B. 822 (1953), *enforced*, 210 F.2d 946 (6th Cir. 1954). It is unnecessary for us to pass on the validity of the finding that the 1955 agreement was only an extension of the 1954 contract; we accept the Trial Examiner's reasoning that, whether it was an extension of the 1954 contract, or whether it was a new and independent contract, its validity depends on conditions which prevailed on August 10, 1954.

[fol. 474] that a discharge for union activities is not a continuing violation, that the employee's right to reinstatement and back pay is barred after six months from the date of discharge, and that the employer therefore does not commit a new unfair labor practice when he refuses reinstatement and back pay after the six months have run. In those cases there was no affirmative action by the employer in the interim between discharge and demand for reinstatement which could support any concept of continuity.

In the instant case, however, the activity which the Board held was an unfair labor practice was the enforcement of the union security clause which was repeated each time a new employee was compelled to join the Union, and the enforcement of the dues checkoff provision which was repeated as to every employee each month. Here the activity charged as being illegal was continuing and repetitive, having a positive impact on the rights of employees every month, if not every day during which the contract was enforced. In such a case it is not unreasonable for the Board, charged with day to day administration of the Labor Act, to say that the facts relating to the genesis of the current illegal activity may be received in evidence even though the statutory period has run with respect to those generative facts. Where there is no continuity (as in *Pennwoven* and *Childs*), the original allegedly illegal act must, to have any effect at all, be given significance independent of the subsequent acts and cannot be received. This same distinction was drawn in *Katz v. NLRB*, *supra*, 196 F.2d 411, 415 n.5a (9th Cir. 1952), and in *NLRB v. United Hoisting Co.*, 198 F.2d 465 (3d Cir. 1952), *cert. denied*, 344 U.S. 914 (1953); see *Superior Engraving Co. v. NLRB*, 183 F.2d 783, 790 (7th Cir. 1950), *cert. denied*, 340 U.S. 930 (1951).

Another aspect of the *Pennwoven* and *Childs* cases serves to distinguish them from the instant case. In those cases, for the Board to have found an unfair labor practice within [fol. 475] the statutory period, it would first have been required to make an express finding that another unfair labor practice had been committed outside the six-month period. The refusal to rehire would only be unlawful if the original firing constituted a violation of the Act or if the refusal

were discriminatory. If the employee contends that the current practice, *i.e.*, the refusal to rehire, is discriminatory, then the *fact* of the original firing may be used as supporting or background evidence. *Paramount Cap Mfg. Co. v. NLRB*, *supra*; see *NLRB v. Textile Mach. Works, Inc.*, 214 F.2d 929 (3d Cir. 1954). The Board is prohibited, however, from making any legal conclusion with regard to events outside the statutory period. *American Fed'n of Grain Millers, AFL v. NLRB*, 197 F.2d 451 (5th Cir. 1952). Although the Board in the instant case must look to the facts surrounding the making of the 1954 contract, its ultimate holding depends on their mere *existence* rather than on ascribing legal significance to those facts standing alone. In other words it is the *enforcing*, not the *signing*, of the contract which is the controlling evidence of the unfair practice.

Any other conclusion would permit an employer and a union to enter into what amounts to a collusive contract without consulting the wishes of a single employee, then sit back for six months before enforcing the membership or dues provisions of the contract and rely on § 10(b) of the Act to protect them from an unfair practice charge. This would defeat one of the basic purposes of the Act which was to insure that employees could select bargaining agents free from domination or coercion. Few things could be more productive of industrial tyranny than to permit employers and unions thus to dictate selection of bargaining agents without consulting employees. The Board's order is therefore clearly consistent with the spirit of the Labor Act and does not violate the letter of its statute of limitations.

[fol. 476] There is another factor to be kept in mind in this case: in interpreting, applying and administering a statute of limitations prescribed by Congress in this context, the Board—and the courts—are not confronted by precisely the same considerations as apply to statutes of limitations affecting the private rights of two individual litigants. As part of a complex statutory scheme the problem the Board here deals with is far broader than the interests of two private litigants; the rights of an indeterminate

number of working men and important rights of the public are also involved, all of this being part of what was thought to be a fairly, if not delicately balanced machinery to preserve collective bargaining equality between employers on the one hand and employees acting through freely and democratically chosen bargaining agents on the other. The Board may have thought that the interests of self determination outweighed otherwise important competing considerations of burying stale disputes. The dispute here involved is not the kind which buries easily but rankles at least once a month in the mind of those offended by being forced, as they see it, to pay tribute to an organization they had no really free choice in joining. We therefore uphold the Board's order under the authority of *NLRB v. Gannett News Co.*, *supra*, 197 F.2d 719 (2d Cir. 1952), *aff'd sub nom. Radio Officers' Union, AFL v. NLRB*, 347 U.S. 17 (1954), and *Katz v. NLRB*, *supra*, 196 F.2d 411 (9th Cir. 1952).

We turn now to the second phase of the attack made on the Board's order by the Union and the Company. The order requires the Union and the Company, jointly and severally, to reimburse the employees for the initiation fees and dues checked off pursuant to the contract. See note 6 *supra*. The Company argues, without challenge, that it merely checked off dues pursuant to a written authorization signed by each individual employee. It then passed the dues and the initiation fees to the Union as the contract required. While the Board found that the [fol. 477] Company did not dominate the Union, it found that the Company accepted the Union's claim of majority status without ever questioning it and without asking for or seeing any proof to substantiate it. In addition it found that the Union's contractual position had been secured by agreement with the Company without regard to the wishes of the employees.

This same problem was recently presented to the Tenth Circuit, and that Court resolved it in accordance with the approach advocated by the Board.¹⁰ The Tenth Circuit

¹⁰ *NLRB v. Broderick Wood Prod. Co.*, 261 F.2d 548 (10th Cir. 1958).

held that the Board's order "should stand unless there is a showing that the order is a patent attempt to achieve ends not designed to fairly effectuate the policies of the Act."¹¹ 261 F.2d at 559. Accordingly, the Board's order is affirmed.

Petition for review in 14257 dismissed.

Petition for enforcement in 14324 granted.

FAHY, Circuit Judge, dissenting: The Board decision drew a dissent from Chairman Leedom and Member Murdock. It is set forth in the report of the case at 119 N.L.R.B. — (1957) where the problem is analyzed in detail. I agree with the position of the Board dissenters, which may be synopsized in the following language from their opinion:

[A]lthough an agreement invalid in its inception may continue to be invalid throughout its life, the fact of its invalidity and the consequent existence of unfair labor practices cannot be established merely by proof that the agreement was being maintained at some point in time subsequent to its execution, but can [fol. 478] only be established by proof of the facts surrounding its execution in the past, which created the initial invalidity. When as here, therefore, the charges are filed more than 6 months after the execution of the agreement, proof of its invalidity and the consequent unfair labor practices can only be established by reliance on evidence of events which occurred more than 6 months before the filing of the charge. This Congress expressly precluded by Section 10 (b).

It is well established, that in making unfair labor practice findings the Board cannot rely solely on events which occurred more than 6 months before the filing of the charges, even though evidence as to such events is admissible for background purposes; and this is so even though the effect of such events continues to be felt within the 6-month period.

¹¹ 261 F.2d at 559 quoting *Virginia Elec. & Power Co. v. NLRB*, 319 U.S. 533, 540 (1943).

One of the principal purposes of a statute of limitations is to bring repose. As stated in *NLRB v. Pennwoolen, Inc.*, 194 F.2d 521, 524 (3d Cir. 1952), the rationale underlying such a statute is to prevent "people . . . being brought to book upon stale charges." Consistently with this, the period of limitations in the Taft-Hartley Act must have been deliberately adopted by Congress to aid in stabilizing labor relations by precluding adversary proceedings based on events which had laid dormant for six months. Under the decision of the court, however, there is no limit whatsoever to the time that might pass, with countless changes in the details of relations and obligations, without a complaint being barred, although proof of the true basis of illegality of the conduct complained of lies in the years that are gone. This seems to me inconsistent with the Congressional policy expressed in § 10(b).

We are not concerned now with the hypothetical case postulated by the court in which a collusive contract is not enforced for six months after its execution so as to evade the statute of limitations. I think that would present a different legal problem.

[fol. 479] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1958

No. 14,257

LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; and INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 14,324

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BRYAN MANUFACTURING COMPANY, Respondent.

On Petition to Review and Set Aside and on Petition to
Enforce an Order of the National Labor Relations Board

Before: Prettyman, Chief Judge, and Fahy and Burger,
Circuit Judges.

JUDGMENT—February 27, 1959

These cases came on to be heard on the record from the
National Labor Relations Board, and were argued by
counsel.

On Consideration Whereof, it is ordered by this court
that in No. 14,257 the petition for review of the order of
the National Labor Relations Board is dismissed; and

It is further Ordered and Adjudged that in No. 14,324 the petition for enforcement of the order of the National Labor Relations Board in this case is granted and the order will be enforced.

Pursuant to Rule 38(1) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with this judgment.

Per Circuit Judge Burger.

Dated: February 27, 1959.

Separate dissenting opinion by Circuit Judge Fahy.

[fol. 482] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 483]

SUPREME COURT OF THE UNITED STATES

No. 780, October Term, 1958

LOCAL LODGE No. 1424, etc., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD.

ORDER ALLOWING CERTIORARI—Filed June 22, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted:

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court, U.S.

FILED

MAR 18 1959

No. [REDACTED]

14

JAMES R. BOWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1958

LOCAL LODGE NO. 4424, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, INTERNATIONAL ASSO-
CIATION OF MACHINISTS, AFL-CIO, AND BRYAN
MANUFACTURING COMPANY, *Petitioners*

NATIONAL LABOR RELATIONS BOARD, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1958

No.

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, INTERNATIONAL ASSO-
CIATION OF MACHINISTS, AFL-CIO, AND BRYAN
MANUFACTURING COMPANY, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT**

Local Lodge No. 1424, International Association of
Machinists, AFL-CIO, International Association of
Machinists, AFL-CIO, and Bryan Manufacturing
Company pray that a writ of certiorari issue to review
the judgment of the United States Court of Appeals
for the District of Columbia Circuit entered in the
above-entitled case on February 27, 1959.

2

OPINIONS BELOW

The opinion of the Court of Appeals, Judge Fahy dissenting, is not yet reported (*infra*, pp. 1a-13a). The decision and order of the Board, Chairman Leedom and Member Murdock dissenting, are reported at 119 NLRB 502 (R. 428-461, 325-427).

JURISDICTION

The judgment of the Court of Appeals was entered on February 27, 1959 (*infra*, p. 14a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the six-month period of limitations of Section 10(b) of the National Labor Relations Act bars the issuance of a complaint to invalidate a collective bargaining agreement and a successor collective bargaining agreement, both lawful on their face and containing a conventional union shop provision, where the sole foundation for the complaint is an alleged unfair labor practice which occurred at the time of the execution of the original agreement more than six months before the filing and service of the charge.

2. Whether, based exclusively on a finding that the original union shop agreement was executed at a time when the contracting union did not have a majority, the National Labor Relations Board may require the employer and the union to reimburse the employees for the union dues and initiation fees remitted by the employer to the union pursuant to the individual check-off authorization of each employee, the period of the refund to run for the term of the original and all succeeding union shop agreements beginning six months preceding the filing of the charge.

STATUTE INVOLVED

Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*), provides in pertinent part that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ."

Section 10(c) of the National Labor Relations Act, as amended, provides in pertinent part that: "If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. . . ."

STATEMENT

I. The Subsidiary Findings of Fact

On August 10, 1954, the International Association of Machinists and the Bryan Manufacturing Company reached accord on the basic terms of a two-year collective bargaining agreement covering the employees of the Company's plant at Reading, Michigan (R. 348-352, 358-359). The Company extended exclusive recognition to the IAM as the bargaining representative of the employees at the Reading plant (R. 350, 283-284):

The Company recognizes the Union as the sole and exclusive bargaining agency for all employees within the bargaining unit consisting of the fol-

lowing: all present and future employees of the company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act:

Among the terms of the agreement was a conventional union shop provision (R. 351):

As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

The agreement also provided for the check-off of union dues and initiation fees upon the individual authorization of each employee (R. 284):

Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the employee's pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization.

About a year later, on August 30, 1955, a second agreement for a three-year term was entered into between the Company and Local Lodge No. 4421, International Association of Machinists (R. 343, 302-323), the Local Lodge having been founded prior to January 1955 (R. 369, n. 45). The unit of employees covered by the second agreement included, in addition to the production and maintenance employees at the Reading plant, the production and maintenance employees at a second plant at Hillsdale, Michigan, some twelve miles away (R. 338, 343-344, 393-394). The acquisition of the second plant at Hillsdale was necessitated by the Company's outgrowth of its facilities at the

Reading plant; the Hillsdale plant was to be manned by the transfer of employees from the Reading plant (R. 393-394).

The second agreement drastically revised the seniority provisions (R. 393). It also altered the job classification structure and provided for an increase in wage rates (R. 393). Numerous additional changes were made of the type which a year's experience might well have indicated were desirable (R. 392-393). The union shop and check-off provisions of the two agreements remained the same (R. 392).

On August 10, 1954, the effective date of the first agreement, there were 148 employees within the unit (R. 382, 365, n. 36). On August 30, 1955, the date the second agreement was made, there were about 350 employees in the unit (R. 394). On November 21, 1955, almost three months later, there were about 480 employees within the unit (R. 394, n. 69). Of the 480 employees in the unit on November 21, 1955, except for 30 to 40 "probationary" employees (those employed 60 days or less), all had authorized the Company to check-off their dues (R. 394, n. 69). Similarly, the 350 employees in the unit on August 30, 1955, had authorized dues check-offs (R. 394). No employee who had been with the Company 45 days or more had ever refused to have his dues checked off (R. 394, n. 69).

The unfair labor practice charges in this case were filed and served more than six months after the Company had recognized and contracted with the IAM on August 10, 1954. On June 9, 1955, Maryalice Mead, an individual, filed a charge against the Company (R. 263-264), served the next day (R. 327, n. 2), and on August 5, 1955, she filed a supplemental charge against

the Company (R. 265-266), served on August 8, 1955 (R. 327, n. 2). The June 9 charge was filed and served ten months after the Company had recognized and contracted with the IAM on August 10, 1954. The same individual filed a charge against the IAM and Local Lodge No. 1424 on August 5, 1955 (R. 260-262), which was served on August 8, 1955 (R. 327, n. 2). The August 5 charge was filed and served almost twelve months after the Company had recognized and contracted with the IAM on August 10, 1954.

The charge against the unions, as the supplemental charge against the Company, alleged *inter alia* that "at the time of the execution of this collective bargaining agreement" on August 10, 1954, the unions "were not unassisted and/or majority representatives of the employees in the unit . . ." (R. 261, 266). Based on these charges, separate complaints were issued against the Company and the unions (R. 267-277). As amended, the complaints alleged *inter alia* that at the time of the entry into the first agreement on August 10, 1954, and into the second agreement on August 30, 1955, the "Union did not in fact represent a majority of the employees within the bargaining unit . . ." (R. 268-269, 274, 282-283).

II. The Ultimate Findings as to the Merits of the Unfair Labor Practice Alleged

On the merits, the Board found that the critical question pertains "to the IAM's lack of majority with respect to the 1954 agreement" (R. 381). It observed that "the crucial date with respect to majority is August 10, 1954, because on that date the Respondent Company, having recognized the IAM and bargained with it, agreed to the provisions of the basic contract which gave the IAM its union-security and check-off

benefits" (R. 382). It concluded that, of the 148 employees in the unit, "the IAM had not been designated by a majority of the employees in the appropriate unit at the Reading plant at any time prior to August 16, 1954" (R. 389).

The Board observed that "the ultimate findings as to the 1955 agreement hinge upon findings as to majority and assistance with respect to the 1954 agreement" (R. 387, n. 63). For, in its view, "such adherence as the IAM secured, on and after that date [August 16, 1954], cannot contribute to establishing a valid and unassisted majority" (R. 389). Based on the finding that the Company had assisted the IAM by recognizing and contracting with it on August 10, 1954, when it did not have a majority (R. 389-390, 413 and n. 98), the Board concluded "that the 1955 agreement is subject to the same taint and infirmity as the 1954 agreement" (R. 395).

Accordingly, based on its foundation "finding that at the time the . . . [Company and the IAM] executed the August 1954 agreement the . . . Unions did not represent a majority of the employees covered by the agreement", the Board stated (R. 437):

It follows therefore, and we find, . . . that . . . the Company violated Section 8(a)(1), (2), and (3) and the . . . Unions 8(b)(1)(A) and (2) by maintaining in effect the 1954 agreement and by executing and maintaining in effect the 1955 agreement, both of which contained unlawful union security clauses.

The union security clauses were found to be unlawful, not because "illegal *per se*" (R. 351), but solely because of the IAM's lack of majority when the 1954 agreement was executed (R. 412-413).

III. The Disposition of the Question Whether the Six Month Period of Limitations Contained in Section 10(b) of the Act Barred the Issuance of the Complaints

Since the critical event—the Company's act of recognizing and contracting with the IAM on August 10, 1954, at a time when the IAM did not have a majority—occurred more than six months before the filing and service of the unfair labor practice charges, the question whether issuance of the complaints was barred by the limitations provision of Section 10(b) of the Act was sharply raised. Section 10(b) provides that:

... no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . .

A divided Board concluded, by a three to two vote, that issuance of the complaints was not barred by the running of the six-month period of limitations.

In the majority's view, Section 10(b) merely precluded the Board from finding the execution of the 1954 agreement to be an unfair labor practice; it did not bar the Board from finding the maintenance in effect of the 1954 agreement for the period beginning six months preceding the filing of the charge, and the execution and maintenance in effect of the 1955 agreement, to be an unfair labor practice (R. 430-435).

The majority supported its conclusion in reliance upon two concepts: (1) "Section 10(b) is a statute of limitations and not . . . a rule of evidence" (R. 432-433); Section 10(b), therefore, "does not bar the receipt of evidence, antedating the critical period, which may be relevant in determining whether conduct within the 6 months period was unlawful" (R. 433); accord-

ingly, "The legality of the Respondents' conduct in maintaining the 1954 and 1955 union security contracts, and in signing the 1955 agreement, must be considered in the light of the evidence surrounding the execution of the 1954 agreement" (R. 435); so considered, it establishes that it was an unfair labor practice to maintain the 1954 and the 1955 agreements, and to execute the 1955 agreement, because the Company recognized and contracted with the IAM on August 10, 1954 when it did not have a majority (R. 436-437). (2) Section 10(b) does not bar issuance of a complaint based on maintenance in effect of an agreement *invalid on its face* but executed more than six months before the filing of the charge; there is "no difference in illegality between a contract unlawful on its face, that is, one prescribing a form of union security prohibited by the Statute, and a contract invalid because certain requisites to the making of a valid contract have not been complied with. In both instances the invalidity begins at a point in time and continues so long as the unlawful contract remains in effect"; accordingly, it does not matter that the illegality of an agreement *valid on its face* can be established solely in reliance on an unfair labor practice attending its execution which antedated the charge by more than six months (R. 434-435).

Chairman Leedom and Member Murdock dissented (R. 449-457). The dissenters were of the view—and the majority agreed as to this—that maintenance in effect of the 1954 agreement, and execution and maintenance in effect of the 1955 agreement, could be found to be unfair labor practices only upon the basis of the IAM's recognition on August 10, 1954; that the six-month period of limitations had clearly run as to that alleged unfair labor practice; and that, since the events

within the six-month period could be found to be unfair labor practices only on the basis of the barred event. Section 10(b) had eliminated the sole foundation upon which any determination of an unfair labor practice could be predicated (*ibid.*).

As to the majority's observation that Section 10(b) does not bar receipt in evidence of events antedating the six-month period, the dissenters pointed out that "evidence as to such events is admissible for background purposes" only, and that it "is well established that in making unfair labor practice findings the Board cannot rely solely on events which occurred more than 6 months before the filing of the charges . . ." (R. 452). As to the majority's assimilation of an agreement invalid on its face with one valid on its face, the dissenters pointed out that the considerations relevant to each are different (R. 451-452):

... in the second type of situation involved herein, where the reason for the invalidity assertedly lies in a failure in executing the agreement to comply with some or all of the requisites for making a valid union-security agreement, the circumstances which cause the agreement to be invalid existed only at the point in time in the past when the agreement was executed and are not thereafter repeated. For this reason, therefore, the continuing invalidity of the agreement is directly related to and is based solely on its initial invalidity, and has no continuing independent basis. Accordingly, although an agreement invalid in its inception may continue to be invalid throughout its life, the fact of its invalidity and the consequent existence of unfair labor practices cannot be established merely by proof that the agreement was being maintained at some point in time subsequent to its execution, but can only be established by proof of the facts surrounding its execution in the past, which

created the initial invalidity. When as here, therefore, the charges are filed more than 6 months after the execution of the agreement, proof of its invalidity and the consequent unfair labor practices can only be established by reliance on evidence of events which occurred more than 6 months before the filing of the charge. This Congress expressly precluded by Section 10(b).

A divided Court of Appeals, Judge Fahy dissenting, affirmed the view of the Board majority, stating that mindful of its "limited scope of review" it was "constrained to uphold the Board's conclusion" (*infra*, p. 5a) as "rational" (*infra*, p. 5a) and "not unreasonable" (*infra*, p. 9a). Judge Fahy in dissent stated in part that (*infra*, p. 13a):

One of the principal purposes of a statute of limitations is to bring repose. As stated in *NLRB v. Pennwoven, Inc.*, 194 F. 2d 521, 524 (3d Cir. 1952), the rationale underlying such a statute is to prevent "people . . . being brought to book upon stale charges." Consistently with this, the period of limitations in the Taft-Hartley Act must have been deliberately adopted by Congress to aid in stabilizing labor relations by precluding adversary proceedings based on events which had laid dormant for six months. Under the decision of the court, however, there is no limit whatsoever to the time that might pass, with countless changes in the details of relations and obligations, without a complaint being barred, although proof of the true basis of illegality of the conduct complained of lies in the years that are gone. This seems to me inconsistent with the Congressional policy expressed in §10(b).

IV. The Board's Order

The Board's order, enforced by the Court of Appeals (*infra*, p. 12a), *inter alia* requires the Company to cease giving effect to its agreements with the unions, severs

the bargaining relationship between them, and bars a resumption of recognition unless and until the unions have been certified by the Board (R. 437-441). In addition, the order requires that the Company and the unions "shall jointly and severally reimburse the employees and the former employees of the Respondent Company whose initiation fees and/or dues in the Respondent Unions have been checked off pursuant to any agreement between the Respondents for the amounts deducted from the employees' earnings, beginning with the applicable 6-month period" (R. 442).

REASONS FOR GRANTING THE WRIT

I.

A divided Court of Appeals, affirming a divided Board, has decided an important question of law pertaining to the limitation of actions on union security agreements, significant in its impact on established bargaining relationships, erroneously and in conflict with the decision of the Court of Appeals for the Fifth Circuit in *American Federation of Grain Millers v. National Labor Relations Board*, 197 F. 2d 451.

1. In a study of 1,653 collective bargaining agreements, covering 5,549,000 workers, the Bureau of Labor Statistics found that union security was provided for in 75 per cent of the agreements, either by a union shop provision (63 per cent) or by a maintenance of membership clause (12 per cent).¹ The decision below holds that the statute of limitations does not run upon any union security agreement while it or

¹ Hammond and Nix, *Union-Status Provisions in Collective Agreements*, 1952, 76 Monthly Lab. Rev. 383, 384-385 (1953).

any succeeding one is in effect, although the agreements are valid on their face and the claim of illegality relates solely to the execution of the original agreement. As Judge Fahy stated in dissent, "Under the decision of the court, . . . there is no limit whatsoever to the time that might pass, with countless changes in the details of relations and obligations, without a complaint being barred, although proof of the true basis of illegality of the conduct complained of lies in the years that are gone" (*infra*, p. 13a). Since most collective bargaining agreements contain union security clauses, the result of the decision below is to strip the vast majority of agreements, and the bargaining relationships upon which they are founded, of the protection of repose which a statute of limitations is designed to confer.

The appropriateness of review of this important question is enhanced by this Court's grant on December 15, 1958, of the Board's petition for a writ of certiorari in *National Labor Relations Board v. Fant Milling Co.*, No. 482, October Term 1958. The question in the latter case is whether the limitations provision of Section 10(b) prohibits the Board from including in a complaint alleged violations which occur *subsequent* to the filing of the charge without the filing of a further charge pertaining to these subsequent violations. In contending that it does not, the Board in its petition to this Court stated that the "1947 amendment restricted the Board's power to probe events occurring more than six months *prior* to the charge . . ." (p. 11). In the instant case the Board asserts just this power to probe events antedating the charge by more than six months. The two cases together thus run the full gamut from events which occur more

than six months before the filing of the charge to events which occur after its filing. Together the two cases afford a full opportunity to settle the meaning of Section 10(b) and sound decision in each would be promoted by their joint consideration.

2. The decision below conflicts with the decision of the Court of Appeals for the Fifth Circuit in *American Federation of Grain Millers v. National Labor Relations Board*, 197 F. 2d 451. In the latter case an employer denied the application for reinstatement made by strikers who had been permanently replaced during the strike. The denial was proper if the strike was economic in nature; it was improper if the strike was caused or prolonged by unfair labor practices.² Whether it was an economic or an unfair-labor practice strike depended upon whether it was caused by an unlawful refusal to bargain. But the alleged refusal to bargain preceding the strike occurred more than six months before the filing and service of the charge. The complaint alleging the discriminatory refusal to reinstate the strikers was accordingly dismissed because it was based upon an unfair labor practice which antedated the charge by more than six months. The Court of Appeals for the Fifth Circuit explained that "what the union is in effect seeking to do is to use the happenings after June 18th [the date six months preceding the filing of the charge], as mere connective incidents wherewith to bridge the fatal gap in time between the happenings really relied on as unfair labor practices and the six months' bar, hoping thereby to cross over the six months' barrier

² *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 236 F. 2d 898, 906 (C.A. 6), affirmed in part and reversed in part on other grounds, 356 U.S. 342.

which would otherwise preclude the charge." 197 F. 2d at 454.

The operative facts in *Grain Millers* and the instant case are identical but the results conflict. In *Grain Millers*, the act antedating the six-month period is the employer's refusal to bargain with the union; in this case, the act is the employer's recognizing and contracting with the union when it does not have a majority. Both acts are unmistakable unfair labor practices; both acts are indispensable predicates for finding a violation within the six-month period. But in *Grain Millers*, because "the happenings really relied on as unfair labor practices" antedated the filing of the charge by more than six months, Section 10(b) was held to bar their importation into the allowable six-month period. Here, on the other hand, although "the happenings really relied on as unfair labor practices" also antedated the filing of the charge by more than six months, their importation was nevertheless permitted.

The decision below conflicts with the principle enunciated in numerous decisions, administrative and judicial, that unobjectionable conduct within the allowable six-month period cannot be converted into an unfair labor practice in reliance upon a barred violation which occurred before then.³ The court be-

³ Thus Section 10(b) has been held to operate as a bar in the following situations: the alleged domination of a labor organization by an employer within the period based exclusively upon evidence of formation, support, or domination antedating the period (*Universal Oil Products Co.*, 108 NLRB 68; *Armco Drainage & Metal Products, Inc.*, 106 NLRB 725, 730-731, enforced as modified, 220 F. 2d 573 (C.A. 6), cert. denied, 350 U.S. 838; *Tennessee Knitting Mills*, 88 NLRB 1103, 1104-1105); the alleged discriminatory refusal to grant a wage increase to employees within the

low states that it "uphold[s] the Board's order under the authority of *NLRB v. Gagnor News Co.*, *supra*, 197 F. 2d 719 (2d Cir. 1952), . . . and *Katz v. NLRB*, *supra*, 196 F. 2d 411 (9th Cir. 1952)" (*infra*, p. 11a). But, as the court itself recognized (*infra*, p. 6a), the invalidity of the agreements in the cited cases was established by a fact in existence within the six-month period; there was no need to look to any event antedating the six-month period to establish the illegal elements.⁴ Here, on the contrary, it is an unfair labor practice antedating the period which is the exclusive foundation for finding a violation with-

period based exclusively upon evidence of discrimination antedating the period (*News Printing Co., Inc.*, 116 NLRB 210); the alleged discriminatory layoff of an employee within the period based exclusively upon evidence of a discriminatory reduction in his seniority antedating the period (*Bowen Products, Inc.*, 113 NLRB 731); and the alleged discriminatory denial of an application for full reinstatement within the period based exclusively upon the employee's discriminatory discharge antedating the period (*N.L.R.B. v. Pennwoven, Inc.*, 194 F. 2d 251 (C.A. 3); *N.L.R.B. v. Chadds Co.*, 195 F. 2d 617 (C.A. 2)).

⁴ The cited cases were decided under that part of the proviso to Section 8(a)(3)—since repealed (Public Law 189, 82d Cong., 1st Sess.)—which had required, in order to validate any union security agreement, that "following the most recent election held as provided in section 9(c) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement." An agreement valid on its face, but unsupported by the requisite certificate of the contracting union, was illegal, and a complaint could properly issue based upon the maintenance of the agreement in effect although executed more than six months before the filing and service of the charge. However, the violation was established by proof of the existence of the agreement, plus proof of the lack of the certificate, both of which were facts in being within the allowable six-month period; there was no need to look to events antedating the period in order to establish the violation.

in the period. The court below can hardly invoke the "authority" of cases in which "the present question was not involved. . . ." *Wright v. United States*, 302 U.S. 583, 593.

3. It is singularly revealing that at no stage does the court below address itself to the words of Section 10(b), its purpose, or its legislative history.

(a) *Words*: The whole foundation of the complaint rests upon the unfair labor practice of recognizing and contracting with the IAM on August 10, 1954, when it did not have a majority. The complaint is "based upon" that unfair labor practice. It is an unfair labor practice "occurring more than six months" before the filing and service of the charge. And Section 10(b) could not state more plainly than it does that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing [and service] of the charge."

(b) *Purpose*: The six-month limitations period was newly adopted in 1947. Concerned that "people were being brought to book upon stale charges," Congress enacted the "rather brief limitation period . . . to shorten up the time in which respondents could be called to answer charges of unfair labor practice." *N.L.R.B. v. Pennwoven, Inc.*, 194 F. 2d 521, 524 (C.A. 3). Enactment of limitations had been severely criticized and sharply opposed, fear having been expressed that it would permit unfair labor practices to go unredressed, particularly in that six months was "the shortest statute of limitations known to the law. . . ." But the view

⁵ S. Min. Rep. No. 105, 80th Cong., 1st Sess., 5, 37; H. Min. Rep. No. 245, 80th Cong., 1st Sess., 90; 93 Cong. Rec. 3323, 4030; respectively in 1 Leg. Hist. 467, 499, 381, 2 Leg. Hist. 998, 1037.

prevailed that "There must be a limitation as to time," and that "within 6 months the complainant against an unfair labor practice should be able to bring it to the attention of the National Labor Relations Board."⁶

Whether the redress of unfair labor practices should be barred by limitations, and the shortness of the period within which the bar should operate, are questions exclusively within the competence of Congress. Congress exercised its judgment by enacting a six-month statute of limitations. In this case the critical unfair labor practice was the inception of the relationship between the IAM and the Company on August 10, 1954. But no charge was filed until ten months later. It could have been filed as easily within the prescribed six months of the event. Having waited four months too long, the action was forever barred. This is what it means to have a statute of limitations.

If, as here, despite the total dependence of the complaint on the alleged unfair labor practice which occurred on August 10, 1954, the Board may nevertheless proceed on the basis of a charge filed ten months later, why not twenty months, thirty months, or forty months later? And if, as here, the Board can undo the bargaining-relationship after the second agreement, simply because of a defect in the original inception of the relationship, why not after the third, fourth, or fifth agreement? To prevent this Congress drew the line at six months. Either that line is to be respected or there is no line.

⁶ 93 Cong. Rec. 4283 in 2 Leg. Hist. 1149; see also, H. Rep. No. 245, 80th Cong., 1st Sess., 40; S. Rep. No. 405, 80th Cong., 1st Sess., 26; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 53; respectively in 1 Leg. Hist. 331, 432, 557.

To disregard the line is at war with the principle of repose—the stability it is designed to foster if a charge is not timely filed and served within the allowable six month period. If the period of limitations has not run in this case, it never can. A bargaining relationship, defective only because of a misstep in its origin, would be perpetually vulnerable. No limitation would be applicable to it. There “never could be an end to the controversy because in the Board’s view the wrong was a continuing tort.” *L. Hand, J., concurring in National Labor Relations Board v. Childs Co.*, 195 F. 2d 617, 621 (C.A. 2). “To adopt the Board’s theory of the continuing violation is not in accordance with what we believe the intent of the Congress was in establishing the six-months limitation period.” *National Labor Relations Board v. Pennwoven, Inc.*, 194 F. 2d 521, 526 (C.A. 3). The “case will never be closed until it is finally litigated” (*id.* at 525); yet to fail to quiet the controversy “would not conduce to that industrial peace which it is the overall purpose of the Act to secure.” *L. Hand, J., supra*, at 621-622.

(c) *Legislative history*: The legislative history shows that a prime object of the statute of limitations was to safeguard a union security agreement from invalidation because of alleged illegality in its inception unless a charge had been filed within the prescribed time measured from the date of the execution of the agreement. The Senate Report observed in its comment upon Section 10(b) that (S. Rep. No. 105, 80th Cong., 1st Sess., 26 in 1 Leg. Hist. 432):

The principal substantive change in this section is a provision for a 6-month period of limitations upon the filing of charges. The Board itself by adopting a doctrine of laches has to some extent discouraged dilatory filing of charges, and a rider

to the current appropriations bill (which if this amendment was adopted would no longer be necessary) contains a 3-month period of limitations with respect to certain kinds of unfair labor practices. [Emphasis supplied.]

The rider to the then current appropriations bill to which the Senate Report referred provided in relevant part that:⁷

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant. . . . [Emphasis supplied.]

Under this rider, the three-month limitations period it prescribed began to run from the time the agreement came into "existence," and if, "without complaint being filed by an employee or employees," the agreement "has been in existence for three months or longer," prosecution of a "complaint case arising over . . . [that] agreement" was barred. This rider was not only part of the then current appropriations bill but it had appeared in substantially the same form in each of the preceding NLRB Appropriation Acts beginning with that for the fiscal

⁷ The Senate Report is dated April 17, 1947. The appropriations bill pertaining to the NLRB then extant was H.R. 2700, 80th Cong., 1st Sess., which had been reported by the House Appropriations Committee on March 21, 1947, 28 days before the Senate Report issued. The Senate referred this appropriations bill to its Appropriations Committee on March 26, 1947, 22 days before the Senate Report issued.

year ending June 30, 1944.^{*} The NLRB Appropriation Act, 1949 (62 Stat. 404), the first to be enacted after the effective date of the 1947 Taft-Hartley amendments, no longer contained a limitations rider, and none has since been included. The elimination of the riders was of course the consequence of the adoption of the general six-month limitations period in Section 10(b): as the Senate Report stated, upon the adoption of Section 10(b) the limitations riders upon appropriations "would no longer be necessary."

It is thus clear that, even before the adoption of Section 10(b), limitations were applicable to bar the invalidation of an agreement if a charge had not been filed within three months of the execution of the agreement and the other conditions of the rider were met. The immediate impetus to the adoption of the limitations riders had been the pendency of proceedings before the Board in 1943 looking towards invalidation of the closed shop agreements covering the employees of the Kaiser shipyards on the Pacific Coast, the agreements being subject to invalidation because they had been entered into with unions which did not possess representative status. The means adopted to safeguard the agreements was to insulate from complaint any agreements "in existence for three months or longer" without a charge filed. 89 Cong. Rec. 6566-69, 6949-54, 7029-34; N.L.R.B., Eighth Annual Report, 7 (1943); N.L.R.B., Ninth Annual Report, 4 (1944). The rider was not confined to the Kaiser shipyards but was given general applicability to assure that "labor relations should be stabilized all over the country" (89 Cong.

^{*} NLRB Appropriation Act, 1944, 57 Stat. 515; NLRB Appropriation Act, 1945, 58 Stat. 567; NLRB Appropriation Act, 1946, 59 Stat. 377; NLRB Appropriation Act, 1947, 60 Stat. 698.

Rec. 6568); and to this end to "adopt the principle of stabilization of union control in the plants where particular unions are now in control" (89 Cong. Rec. 7033). See also 89 Cong. Rec. 6566, 6567, 6953, 6954, 7029, 7034. The gist of the matter was succinctly put by Congressman Tarver (89 Cong. Rec. 6953):

we should enact this proviso and stop this squabbling out there on the Pacific Coast or anywhere else in the country, especially when the contract, *whether it was proper at the time of its inception or not*, has been in effect for three months without complaint. [Emphasis supplied.]

And the administrative interpretation and application of the limitations riders left no doubt that, regardless of the enforcement of the union security agreements, the agreements were nevertheless invulnerable to invalidation unless a charge had been filed within the requisite three months from their inception and the other conditions of the riders had been met. N.L.R.B., Eighth Annual Report, 6-10 (1943); N.L.R.B., Ninth Annual Report, 4-6 (1944); NLRB Interpretations Issued April 20, 1944, 12 LRRM 2232; Comptroller General Decision B-37051, October 4, 1943, 12 LRRM 2227, 2232.

Yet the decision below wipes out the applicability of limitations to union security agreements. It thereby not only renders untrue the statement in the Senate Report that upon adoption of Section 10(b) the limitations riders upon the Board's appropriations "would no longer be necessary." It also requires the conclusion that, when Congress for the first time in 1947 enacted a statute of limitations having general applicability to all unfair labor practices, it was at the same time and by that very act eliminating the al-

ready existing applicability of limitations to union security agreements. This is not possible.

4. The Board and the court below rely upon considerations which elide the issue:

(a) The Board states that Section 10(b) is a statute of limitations and not a rule of evidence (R. 432-433); that it therefore does not bar receipt in evidence of events antedating the allowable six-month period (R. 433); that consideration of that antedating evidence establishes that the Company recognized and contracted with the IAM when it did not have a majority and for that reason the union security agreement was invalid at inception (R. 434-435); and, therefore, by reason of this initial invalidity, maintenance of the original agreement and execution and maintenance of the successor agreement within the six-month period may be found to be an unfair labor practice (R. 436-437).

To reason in this fashion is to end with the conclusion that Section 10(b) is not only not a rule of evidence, it is not a statute of limitations either. The court below amended the Board's statement by adding that the receipt of evidence antedating the six-month period is "subject to the important qualification that testimony as to such barred events may be received only as background evidence and may not be given independent significance" (*infra*, pp. 6a-7a). But this was a promise to the ear broken to the hope. For the court gave the barred unfair labor practice just that "independent significance" which it stated was precluded.

The controlling event in this case is the Company's act of recognizing and contracting with the IAM on August 10, 1954 when the IAM did not have a majority.

It is this barred unfair labor practice, which occurred ten months before the first charge was filed, that is the exclusive foundation for the conclusion that offenses occurred within the allowable period. But for this barred act there is *no* evidence of a violation within the six-month period. The unfair labor practice antedating the period is thus used, not as a background evidence, but as the sole evidence upon which to predicate the violation found. The barred event was given more than "independent significance"; it was given exclusive significance. But "Section 10(b) of the Act precludes the Board from giving independent and controlling weight to such evidence."⁹

(b) The Board reasons that, as Section 10(b) does not bar issuance of a complaint based on continuance in effect of an agreement *invalid on its face* but executed more than six months before the filing of the charge, the same must be true of an agreement *valid on its face* but illegal because executed when the contracting union did not have a majority (R. 434-435). The distinction between the two is obvious and decisive.

With an agreement invalid on its face, no evidence but the agreement is needed to establish the violation of maintaining an unlawful arrangement in effect. No proof of events antedating the allowable six-month period is requisite; no question arises of reliance upon a barred unfair labor practice to establish the viola-

⁹ *News Printing Co.*, 116 NLRB 210, 212; *Universal Oil Products Co.*, 108 NLRB 68, 69-70; *Armco Drainage & Metal Products, Inc.*, 106 NLRB 725, 730, enforced as modified, 220 F. 2d 573 (C.A. 6), cert. denied, 350 U.S. 838; *Local Union No. 1118, General Longshore Workers*, 102 NLRB 720, 730, enforced, 212 F. 2d 846 (C.A. 5); *Greenville Cotton Oil Co.*, 92 NLRB 1033, 1034, n. 6, affirmed, 197 F. 2d 451 (C.A. 5).

tion. In this context the concept of continuing violation is relevant only in refutation of the defense that because the arrangement was inaugurated more than six months before the charge was filed its current maintenance in effect is *inamque*. To that argument the simple and direct answer is that the illegality, patent on the face of the agreement and requiring no proof of antecedent events, did not cease with its inception but continued to date.

Not so with an agreement valid on its face. It is not possible to say of such an agreement that on its face its maintenance in effect is a continuing violation. Only proof of illegality in its inception would furnish the predicate for a statement that it is illegal in its continuance. And it is precisely this showing that Section 10(b) operates to preclude when establishment of illegality in inception depends upon proof of an unfair labor practice antedating the filing of the charge by more than six months. That is this case.

The court below seeks to finesse the difference. It states that within the six-month period union membership and dues payment were "contractually compelled"; that these "unfair practices . . . are positive acts which are both continued and repeated"; and "where the violations are of this character, i.e., continued and repeated," it is "appropriate for the Board to rely on events outside the statutory period to establish a critical element of proof of the offense" (*infra*, p. 8a). The Board espoused no such notion. And for obvious reasons. For what the court below describes as "unfair practices" and "violations" are the normal and legitimate attributes of the administration of any union security agreement. The very reason for being of a union security agreement is to require the

employee to obtain union membership by paying initiation fees and to retain union membership in good standing by paying periodic dues. This the statute permits in express terms. (Proviso to Section 8(a) (3); *Radio Officers' Union v. National Labor Relations Board*, 347 U.S. 17, 40-42). Union membership and dues payment pursuant to the terms of a union security agreement valid on its face can be said to be "unfair practices" and "violations" only by showing that one of the conditions requisite to entry into the agreement has not been met. It is this showing that Section 10(b) precludes when execution of the agreement antedates the filing of the charge by more than six months. In short, the court below would justify piercing the six-month period by calling the acts involved in the administration of a union security agreement "unfair practices" and "violations", whereas the only legal basis for characterizing the acts as "unfair practices" or "violations" arises only after the six-month period has already been breached. This is a brilliant example of lifting oneself by one's own bootstraps.

(c) The court below states that, because of the more ramified interests with which the Taft-Hartley Act deals, "in interpreting, applying and administering a statute of limitations prescribed by Congress in this context, the Board—and the courts—are not confronted by precisely the same considerations as apply to statutes of limitations affecting the private rights of two individual litigants" (*infra*, pp. 10a-11a). This is novel doctrine. This Court was unimpressed with it in *Unexcelled Chemical Corp. v. United States*, 345 U.S. 59, 66. In that case, in holding that a complaint under the Walsh-Healey Act, alleging the knowing

employment of child labor was barred by limitations, this Court gave the statute of limitations a conventional construction, rejecting the countervailing argument that the conventional construction "will prejudice the power of the United States to safeguard the public interest." *Id.* at 66. Congress was also unimpressed when it enacted Section 40(b). It described the mischief at which it aimed in the traditional terms of eliminating delayed litigation "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused." H. Rep. No. 245, 80th Cong., 1st Sess., 40 in 1 Leg. Hist. 331. In its earlier enactment of the limitations riders upon the Board's appropriations, designed expressly to safeguard from invalidation union security agreements not the subject of a timely charge, Congress stressed "stabilization" (*supra*, pp. 21-22), the thought which is fundamental to repose. And the very shortness of the six-month period which Congress adopted demonstrates its dominating purpose to bring about speedy sarcase to a controversy not made the subject of a prompt charge. When the court below states, with approval, that the "Board may have thought that the interests of self-determination outweighed otherwise important considerations of burying stale disputes" (*infra*, p. 11a), it sanctions an administrative revision of the congressional judgment.

(d) The court below states that "Our scope of review is limited to determining . . . whether the Board has applied the statute in 'a just and reasoned manner.'" *Gray v. Powell*, 314 U.S. 402, 411 (1941). Having in mind this limited scope of review, we are con-

strained to uphold the Board's conclusion" (*infra*, p. 5a).¹⁰ To invoke this concept in this case "is heresy." Jaffe, *Judicial Review: "Substantial Evidence On The Whole Record,"* 64 Harv. L. Rev. 1233, 1258 (1951). *Gray v. Powell* teaches that "Once the appropriate standards of relevance have been given by the courts, the agency is the sole body competent to apply those standards to a state of facts, whether agreed to or disputed." *Id.* at 1259. That is not this case. Here it is the meaning of the statute itself which must be determined in the light of its words, purpose, and history; and since it is the meaning of a statute of limitations in particular which is in issue, the subject by its nature is especially suited for independent judicial inquiry. Agency expertness not only does not contribute to the solution of this naked question of law but positively derogates from it. For the drive of the administrative mind is to regard a statute of limitations as an annoying impediment to the accomplishment of the agency's regulatory mission. It takes a mind schooled in a broader discipline to know, as Mr. Justice Holmes has stated, that "the principle [of repose] involved is as worthy of respect as any known to the law." *Dunbar v. Providence and Boston R.R. Co.*, 181 Mass. 383, 385. In this context for the court below to say that it is "constrained" to uphold the Board's conclusion as "rational" (*infra*, p. 5a) and "not unreasonable" (*infra*, p. 9a) "suggests an abdication of the judicial function." Jaffe, *Judicial Review: Questions of Law*, 69 Harv. L. Rev. 239, 263 (1955).

¹⁰ Omitted from the quotation is the court's additional statement that review is also "limited to determining whether there is substantial evidence in the record as a whole to support the Board's findings of fact . . ." (*infra*, p. 5a). This is correct but irrelevant since petitioners did not contest the findings.

II

The Board's order, enforced by the court below (*infra*, p.), provides in part that petitioners "shall jointly and severally reimburse the employees and the former employees of the Respondent Company whose initiation fees and/or dues in the Respondent Unions have been checked off pursuant to any agreement between the Respondents for the amounts deducted from the employees' earnings, beginning with the applicable 6-month period" (R. 442). The Board gave no explanation for its order other than to cite its earlier opinion in *Hibbard Dowel Co.*, 113 NLRB 28 (R. 417, n. 100, 442, n. 23). *Hibbard Dowel* gave no explanation other than to assert that the payment of dues and fees under the sanction of a union security agreement is involuntary, and that since the involuntarism is rooted in an invalid agreement reimbursement is justified. 113 NLRB at 30-31.

The premise is fundamentally false. When the 1947 amendments to the Act were adopted, the proviso to Section 8(a)(3) was amended to provide that a union security agreement could only be valid "if, following the most recent election held as provided in section 9(c) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement. . . ." This requirement was repealed on October 22, 1951 (Public Law 189, 82d Cong., 1st Sess.), it having proved "burdensome and unnecessary." *National Labor Relations Board v. Gannett News Co.*, 197 F.2d 719, 724 (C.A. 2), affirmed, 347 U.S. 17. Its pointlessness was manifest from the results of the union-shop authorization polls conducted by the Board which overwhelmingly

demonstrated that employees voluntarily favor the adoption of union security agreements.¹¹

The polls forever put the quietus to the notion that union security agreements merely constitute a device to constrain the payment of dues and fees by an unwilling majority. These agreements operate compulsively only as to that small group known as "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union . . ." *Radio Officers' Union v. National Labor Relations Board*, 347 U.S. 17, 41. Such agreements are the means by which a majority of the employees can require a negligible minority to pay their own way.

There is no reason to suppose that the sentiment was different in the present case. While the 1951 amendment repealed the requirement of a prior election to validate a union security agreement, it substituted in its stead the stipulation that a union security agreement may neither be executed nor enforced if "following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the ~~Board~~ shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement"

¹¹ Thus, for the fiscal year ending June 30, 1951, of 1,335,683 valid votes cast in such referendums, 1,164,143, or 87.2% of the employees, voted in favor of the union shop. (N.L.R.B., Sixteenth Annual Report, 306 (1951).) The same was true of the preceding years. In 1950, of 900,866 valid votes, 89.4% favored the union shop (N.L.R.B., Fifteenth Annual Report, 235 (1950)); in 1949, of 1,471,092 valid votes, 93.9% favored the union shop (N.L.R.B., Fourteenth Annual Report, 172 (1949)); in 1948, of 1,629,330 valid votes, 94.2% favored the union shop (N.L.R.B., Thirteenth Annual Report, 111 (1948)).

(Section 8(a)(3) proviso). Thus the employees have it within their power to divest an agreement of its union security provision. No deauthorization petition was ever filed in this case, although it could have been at any time (*Andor Co., Inc.*, 119 NLRB 925), the only requirement for the conduct of an election being that the petition be supported "by 30 per centum of the employees in a bargaining unit covered by an agreement" containing a union security clause (Sec. 9(e)(1)). Not even 30 percent of the employees could be mustered to support an election looking toward rescission of the union security provision of the agreements.

This record demonstrates the extremes of the Board's assumption. The Board premises the invalidity of the union security agreement upon the single circumstance that less than half of 148 employees designated the IAM to represent them on August 10, 1954. Yet there were 350 employees in the unit about a year later, more than doubling the initial complement; and there were 480 employees in the unit on November 21, 1955, more than tripling the initial complement (*supra*, p. 5). Thus most of the employees were newly added after the original execution of the 1954 agreement. When they arrived on the scene they found nothing but the conventional manifestations of a typical bargaining relationship. There is no reason to suppose that they did not willingly embrace what they found, as is true in thousands of plants throughout the United States.

The emptiness of the Board's major premise is matched by its disregard of other cogent considerations. The 1954 and 1955 agreements provided substantial benefits for the employees. The negotiation

of an agreement costs money, as does its administration. Dues and fees go towards defraying the cost. They do not repose in depositories. It may safely be assumed that much of the fees and dues collected in this case have been expended to pay for services. To require the reimbursement of dues and fees at this late date does not simply mean that the employees will have received the benefits of union representation without contributing to their cost. The moneys for reimbursement must come from somewhere, and insofar as the unions are concerned, they must come from the dues and fees paid by other employees in other plants. What reimbursement comes down to, therefore, is that the employees in this case will have the benefits they secured from union representation paid for by the employees in other plants. This does not serve to effectuate any policy of the Act. And insofar as the Company is concerned, it simply acted as a conduit for the transmission of the funds.

Furthermore, it is the fees and dues *checked-off* pursuant to the employee's individual authorization which are to be reimbursed. If, as we must infer from the Board's order, it is the check-off authorization which is critical, it is plain that that authorization is the individual voluntary act of each employee. Nothing compels the check-off authorization; it serves the employee's convenience as well as the union's. Thus in requiring reimbursement of *checked-off* fees and dues, the Board's order identifies as critical the very act which indisputably flows from the employee's individual authorization.

The Board's order is rooted in an extension and misapplication of this Court's decision in *Virginia Electric and Power Co. v. National Labor Relations*

Board, 319 U.S. 533. This Court decided that a reimbursement order was within the Board's power and that the exercise of the power was within the Board's discretion in the particular circumstances of that case. The ruling circumstance in *Virginia Electric*, which controlled the evaluation of every other factor, was "that the Company was responsible for the creation of the I.O.E. [the contracting union] by providing its initial impetus and direction and by contributing support during its critical formative period." 319 U.S. at 540. The company-dominated character of the contracting union is at the heart of *Virginia Electric*. The ruling factor of domination present in *Virginia Electric* is absent here. In this case the Board expressly found that the unions were *not* sponsored or dominated by the Company (R. 413-414). And there are no substituting circumstances which the Board has convincingly appraised or which exist to support the reimbursement order here.

To found a reimbursement order solely upon the invalidity of the union security provision of an agreement, and to have it run in favor of all the employees covered by the agreement, is a recent innovation of the Board. Member Peterson dissenting in *Brown-Olds Plumbing & Heating Corp.*, 115 NLRB 594, 605-606. It rests exclusively on the administrative *ipse dixit* that regardless of circumstances the payment of union dues must be presumed to have been involuntary. The Board's discretion is not so limitless as to authorize it to mulct an employer and a union by requiring the refund of dues—which the employer never kept and which the union has long since expended to pay for service—upon the basis of nothing but a hostile surmise that the dues would not have been paid but for the union security provision of the agreement.

The question is of manifest importance for, as the General Counsel of the Board has explained, what the Board has done "was to extend the broad reimbursement order, theretofore reserved for Section 8(a)(2) situations, to payments coerced under illegal union security or hiring arrangements with any unions even if not employer-dominated or supported." Address, June 27, 1958, 42 LRRM 101, 102.

CONCLUSION

For the reasons stated this petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 1959.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 14257

LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; and INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 14324

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

BRYAN MANUFACTURING COMPANY, *Respondent*

On Petition to Review and Set Aside and on Petition to
Enforce an Order of the National Labor Relations Board

Decided February 27, 1959

Mr. Bernard Dunau, with whom *Mr. Plato E. Papps*
was on the brief, for petitioners in No. 14257.

Mr. Frederick U. Reel, Attorney, National Labor Relations Board, with whom *Messrs. Jerome D. Fenton*, General Counsel, National Labor Relations Board, *Thomas J. Dermott*, Associate General Counsel, National Labor Relations Board, *Marcel Mallet-Prévost*, Assistant General Counsel, National Labor Relations Board, and *William W. Watson*, Attorney, National Labor Relations Board, were on the brief, for respondent in No. 14257 and petitioner in No. 14324.

Mr. Frank L. Gallucci, with whom *Mr. Abraham Dobkin*
was on the brief, for respondent in No. 14324. *Mr. Plato*

E. Papps also entered an appearance for respondent in No. 14324.

Before PRETTYMAN, *Chief Judge*, and FAHY and BURGER, *Circuit Judges*.

BURGER, *Circuit Judge*: The Bryan Manufacturing Company (respondent in 14324), which then employed about 150 persons in its Reading, Michigan, plant received a letter in July 1954 from the International Association of Machinists advising that the Machinists represented "a majority of the 'production and maintenance' employees of your company." The Machinists sought a collective bargaining agreement.

In the proceedings from which this appeal arises it was found by the Trial Examiner and the Labor Board that the Machinists did not in fact represent a majority of the company's employees at that time, and this finding of no majority is not challenged here.¹ At the time the Company received the letter, Local 701, United Auto Workers, was engaged in organizing activities among Bryan employees at the Reading plant, but this was discontinued after the Company signed a collective bargaining agreement with the Machinists.

On August 10, 1954, the Company signed a contract with the Machinists without first seeing or seeking any evidence that the Union represented a majority of its employees. No employee authorization cards were shown to management representatives, no election was held, and the Company made no independent inquiry as to the desires of its employees. The August 10, 1954 contract contained

¹ At the hearing on the complaint before the Trial Examiner thirteen persons employed at Reading when the contract was signed testified that they did not know or hear that the Machinists had interested themselves in organizing the plant until about a week after the contract was signed. It was stipulated that an additional thirteen employees would give similar testimony.

a conventional union shop clause and a dues check-off provision.

On June 9, 1955, approximately ten months after the 1954 contract was signed, but two months before it was renewed in a 1955 contract having the same union shop and dues check-off provisions, one Maryalice Mead² filed a charge of unfair labor practices against the Machinists and the Company; on August 5, 1955, she filed supplemental charges.³ Each charge asserted the frustration of a free choice of the employees in the selection of a bargaining agent. On October 5, 1955, separate complaints were filed against the Union and the Company on the basis of these charges, and the complaints were consolidated for hearing and determination.

On August 30, 1955, the Union and the Company signed a new contract which included employees at an additional Bryan plant in a nearby town. Although the new contract had revised seniority provisions, was effective for a different term, and contained several other changes, it had a union shop clause and a dues check-off provision identical to those in the 1954 contract.

Between August 1954 and August 1955 the Company expanded its operation from 150 to 350 employees, and by November 1955 there were 480 persons covered by the contract. Each new employee hired was compelled to join the Machinists union within 45 days of being hired, and each signed an individual dues checkoff authorization. The Union does not challenge the finding that the identical union shop provisions in the 1954 and the 1955 con-

² She was employed by Bryan at the Reading plant from November 1953 until October 1955.

³ The Board adopted the Trial Examiner's finding inter alia that, in the spring of 1955 "discontent at the Reading plant developed among employees who resented the way in which their right to self-determination had been thwarted when the IAM's [Machinists'] contract had literally been thrust upon them . . ."

tracts were enforced during the period pertinent here, and that the dues of every employee were checked off under the respective provisions.

The Union now seeks review and the Board enforcement of an order and finding that both the Union and the Company violated the Labor Act¹ by maintaining and enforcing the union shop provision² and the dues checkoff agreement³ in the two contracts. The Board held that such enforcement was an unfair labor practice because the basic contract was formally executed at a time when the Union did not represent a majority of the Company's employees. The primary issue presented on appeal is whether the Labor Act's statute of limitations⁴ bars the Board from finding that these acts, *i.e.*, the enforcement

¹ National Labor Relations Act, §§ 8(a)(1)-(3), (b)(1), (2), 61 Stat. 140 (1947), 29 U.S.C., §§ 158(a)(1)-(3), (b)(1), (2).

² "As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement."

³ "Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the employee's pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization."

⁴ "Deductions provided for above shall be remitted to the financial secretary of the Union no later than the tenth day of the month following the deduction. The Company shall furnish the financial secretary of the Union monthly pay record of those for whom deductions have been made."

⁵ National Labor Relations Act § 10(b), 61 Stat. 146 (1947), 29 U.S.C. § 160(b): "Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made."

of the union shop and the monthly checkoff of dues, were unfair labor practices.

Our scope of review is limited to determining whether there is substantial evidence in the record as a whole to support the Board's findings of fact, *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951), and whether the Board has applied the statute in "a just and reasoned manner." *Gray v. Powell*, 314 U.S. 402, 411 (1941). Having in mind this limited scope of review, we are constrained to uphold the Board's conclusion.

If the alleged violation were the mere signing of the original contract in 1954 as distinguished from continuing and repeating its enforcement against employees, the Board's order would be invalid under § 10(b). It was rational, however, for the Labor Board to conclude that the violation charged was a continuing one, repeated anew each time the union security clause was enforced or dues checked off. Hence, the statutory period had not expired. *NLRB v. Gannett News Co.*, 197 F. 2d 719 (2d Cir. 1952), *aff'd sub nom. Radio Officer's Union, AFL v. NLRB*, 347 U.S. 17 (1954); *Katz v. NLRB*, 196 F. 2d 411 (9th Cir. 1952). New employees were affected by the contract as they were employed. Each month up to and including the month when the charge was served, dues were deducted from the wages of each employee of the company, including Marvalice Mead, who filed the charge. Thus the contract provisions had a positive impact which was repeated regularly from time to time as to each employee.

It is contended that § 10(b) prevents the Board from relying on events occurring more than six months prior to service of the charge in order to prove a violation. The union security clause and the dues checkoff provision here involved were proper on their face. Therefore in order to show the illegality of enforcing these agreements, the Board was compelled to look back more than six months in order to show that the Union did not rep-

resent a majority of employees when the contract was signed. According to the Union and the Company, the Board may not do this. This issue raises questions on which authority is limited and no cases are precisely or directly in point.

In *NLRB v. Gaylor News Co.*, *supra*, the Second Circuit upheld a finding that it was a continuing violation for a company to enforce a union shop contract without first obtaining Board certification that a majority of employees had authorized such a contract. Under the then existing law no union shop contract was valid without such a certification.* In the case before us the Union and the Company would distinguish the *Gaylor News* case on the basis that there the absence of the required certificate was observable within the six-month period. There was no need in that case, they point out, to go back beyond the statutory period to demonstrate the illegality of enforcing the union shop clause. *Cf. NLRB v. Carpenters Local 1028, AFL*, 232 F. 2d 454 (10th Cir.), *cert. denied*, 352 U.S. 839 (1956). In the instant case no evidence from within the statutory period will serve to show why enforcement is illegal.

Section 10(b) is, however, a statute of limitations and not a rule of evidence. *NLRB v. Clausen*, 188 F. 2d 439, 443 (3d Cir.) *cert. denied*, 342 U.S., 868 (1951) (dictum). The established rule is that evidence of "transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny." *FTC v. Cement Institute*, 333 U.S. 683, 705 (1948). This rule is, of course, subject to the important qualification that testimony as to such barred events may be received only as background

* National Labor Relations Act, § 8(a)(3), *Provided* (ii), 61 Stat. 140 (1947), subsequently amended by 65 Stat. 601 (1951), 29 U.S.C. § 158(a)(3), *Provided* (ii).

evidence and may not be given independent significance. See *Paramount Cap Mfg. Co. v. NLRB*, 260 F. 2d 109 (8th Cir. 1958). Put in another way, there must be acts occurring within the six-month period of sufficient status to constitute the violation charged, and evidence of acts outside the period can be received only to illuminate and explain the events within the period.

This brings us to the crux of the case: was the fact that the union did not represent a majority of Bryan employees when the contract was signed of such independent significance that its use in evidence is barred by § 10(b) or does this fact, in these circumstances merely serve to illuminate and explain the subsequent enforcement of the contract—an occurrence taking place within the statutory period?

The Board did not find here that the formal execution of the 1954 contract with its union security clause and its dues checkoff provision violated the act. It found rather that maintenance and enforcement of the 1954 contract was an unfair labor practice and further that the signing of the 1955 contract also constituted a violation.⁹ Since a majority of the Bryan employees were

⁹ The Board adopted the Trial Examiner's finding "that the 1955 agreement is a modification and extension of the 1954 agreement." The Examiner reasoned in the alternative, however, that "even if the 1955 agreement were to be considered a new agreement between different parties, the fact remains that any majority claimed by the Local Lodge at the time the 1955 agreement was entered into, which rests on the checkoff authorizations then in effect and secured pursuant to the 1954 agreement, clearly would have no validity in establishing an unassisted majority, under the holding of the Board" in *Oliver Mach. Corp.*, 102 N.L.R.B. 822 (1953), *enforced*, 210 F. 2d 946 (6th Cir. 1954). It is unnecessary for us to pass on the validity of the finding that the 1955 agreement was only an extension of the 1954 contract: we accept the Trial Examiner's reasoning that, whether it was an extension of the 1954 contract, or whether it was a new and independent contract, its validity depends on conditions which prevailed on August 10, 1954.

members of the Union by the time the 1955 contract was signed, the illegality of the 1955 contract stems from the illegality of enforcing the 1954 contract for if enforcement of the 1954 contract was an unfair labor practice, the fact that the Union achieved majority status subsequent to its execution and as a direct result thereof does not remove the taint. Changes in status which result from unfair practices have been said by the Supreme Court not to affect the Board's power to restore the *status quo ante*. *Franks Bros. Co. v. NLRB*, 321 U.S. 702, (1944); see *Joy Silk Mills, Inc. v. NLRB*, 87 U.S. App. D.C. 360, 372, 185 F. 2d 732, 744 (1950), *cert. denied*, 341 U.S. 914 (1951).

The Board takes the position that evidence of the Union's lack of status when the contract was signed is not in and of itself the basis for its legal conclusions, but is used only to illuminate subsequent events, namely contractually compelled union membership and dues checkoff, these being events which occurred within the six months prior to service of the charges. In this situation, that distinction would seem to have validity because the unfair practices involved are positive acts which are both continuing and repeated. Only where the violations are of this character, *i.e.*, continuing and repeated, however, is it appropriate for the Board to rely on events outside the statutory period to establish a critical element of proof of the offense.

It seems to us this distinction is illustrated by *NLRB v. Pennsgrove, Inc.*, 194 F. 2d 521 (3d Cir. 1952), and *NLRB v. Childs Co.*, 195 F. 2d 617 (2d Cir. 1952). Those cases hold that a discharge for union activities is not a continuing violation, that the employee's right to reinstatement and back pay is barred after six months from the date of discharge, and that the employer therefore does not commit a new unfair labor practice when he refuses reinstatement and back pay after the six months have

run. In those cases there was no affirmative action by the employer in the interim between discharge and demand for reinstatement which could support any concept of continuity.

In the instant case, however, the activity which the Board held was an unfair labor practice was the enforcement of the union security clause which was repeated each time a new employee was compelled to join the Union, and the enforcement of the dues checkoff provision which was repeated as to every employee each month. Here the activity charged as being illegal was continuing and repetitive, having a positive impact on the rights of employees every month, if not every day during which the contract was enforced. In such a case it is not unreasonable for the Board, charged with day to day administration of the Labor Act, to say that the facts relating to the genesis of the current illegal activity may be received in evidence even though the statutory period has run with respect to those generative facts. Where there is no continuity (as in *Pennworen* and *Childs*), the original allegedly illegal act must, to have any effect at all, be given significance independent of the subsequent acts and cannot be received. This same distinction was drawn in *Katz v. NLRB*, *supra*, 196 F. 2d 411, 415 n. 5a (9th Cir. 1952), and in *NLRB v. United Hoisting Co.*, 198 F. 2d 465 (3d Cir. 1952), *cert. denied*, 344 U.S. 914 (1953); see *Superior Engraving Co. v. NLRB*, 183 F. 2d 783, 790 (7th Cir. 1950), *cert. denied*, 340 U.S. 930 (1951).

Another aspect of the *Pennworen* and *Childs* cases serves to distinguish them from the instant case. In those cases, for the Board to have found an unfair labor practice within the statutory period, it would first have been required to make an express finding that another unfair labor practice had been committed outside the six-month period. The refusal to rehire would only be unlawful if the original firing constituted a violation of the Act or if the refusal were discriminatory. If the employee contends that the

current practice, i.e., the refusal to rehire, is discriminatory, then the fact of the original firing may be used as supporting or background evidence. *Paramount Cap Mfg. Co. v. NLRB*, *supra*; see *NLRB v. Textile Mach. Works, Inc.*, 214 F. 2d 929 (3d Cir. 1954). The Board is prohibited, however, from making any legal conclusion with regard to events outside the statutory period. *American Fed'n of Grain Millers, AFL v. NLRB*, 197 F. 2d 451 (5th Cir. 1952). Although the Board in the instant case must look to the facts surrounding the making of the 1954 contract, its ultimate holding depends on their mere existence rather than on ascribing legal significance to those facts standing alone. In other words it is the enforcing, not the signing, of the contract which is the controlling evidence of the unfair practice.

Any other conclusion would permit an employer and a union to enter into what amounts to a collusive contract without consulting the wishes of a single employee, then sit back for six months before enforcing the membership or dues provisions of the contract and rely on § 10(b) of the Act to protect them from an unfair practice charge. This would defeat one of the basic purposes of the Act which was to insure that employees could select bargaining agents free from domination or coercion. Few things could be more productive of industrial tyranny than to permit employers and unions thus to dictate selection of bargaining agents without consulting employees. The Board's order is therefore clearly consistent with the spirit of the Labor Act and does not violate the letter of its statute of limitations.

There is another factor to be kept in mind in this case: in interpreting, applying and administering a statute of limitations prescribed by Congress in this context, the Board—and the courts—are not confronted by precisely the same considerations as apply to statutes of limitations affecting the private rights of two individual lit-

gants. As part of a complex statutory scheme the problem the Board here deals with is far broader than the interests of two private litigants; the rights of an indeterminate number of working men and important rights of the public are also involved, all of this being part of what was thought to be a fairly, if not delicately balanced machinery to preserve collective bargaining equality between employers on the one hand and employees acting through freely and democratically chosen bargaining agents on the other. The Board may have thought that the interests of self determination outweighed otherwise important competing considerations of burying stale disputes. The dispute here involved is not the kind which buries easily but rankles at least once a month in the mind of those offended by being forced, as they see it, to pay tribute to an organization they had no really free choice in joining. We therefore uphold the Board's order under the authority of *NLRB v. Gannor News Co.*, *supra*, 197 F. 2d 719 (2d Cir. 1952), *aff'd sub nom. Radio Officers' Union*, *AFL v. NLRB*, 347 U.S. 17 (1954), and *Katz v. NLRB*, *supra*, 196 F. 2d 411 (9th Cir. 1952).

We turn now to the second phase of the attack made on the Board's order by the Union and the Company. The order requires the Union and the Company, jointly and severally, to reimburse the employees for the initiation fees and dues checked off pursuant to the contract. See note 6 *supra*. The Company argues, without challenge, that it merely checked off dues pursuant to a written authorization signed by each individual employee. It then passed the dues and the initiation fees to the Union as the contract required. While the Board found that the Company did not dominate the Union, it found that the Company accepted the Union's claim of majority status without ever questioning it and without asking for or seeing any proof to substantiate it. In addition it found that the Union's contractual position had been secured by agreement with the Company without regard to the wishes of the employees.

This same problem was recently presented to the Tenth Circuit, and that Court resolved it in accordance with the approach advocated by the Board.¹⁰ The Tenth Circuit held that the Board's order "should stand unless there is a showing that the order is a patent attempt to achieve ends not designed to fairly effectuate the policies of the Act."¹¹ 261 F. 2d at 559. Accordingly, the Board's order is affirmed.

Petition for review in 14257 dismissed.

Petition for enforcement in 14324 granted.

Fifth Circuit Judge dissenting: The Board decision drew a dissent from Chairman Leedom and Member Murdock. It is set forth in the report of the case at 119 N.L.R.B. — (1957) where the problem is analyzed in detail. I agree with the position of the Board dissenters, which may be synopsized in the following language from their opinion:

[A]lthough an agreement invalid in its inception may continue to be invalid throughout its life, the fact of its invalidity and the consequent existence of unfair labor practices cannot be established merely by proof that the agreement was being maintained at some point in time subsequent to its execution, but can only be established by proof of the facts surrounding its execution in the past, which created the initial invalidity. When as here therefore, the charges are filed more than 6 months after the execution of the agreement, proof of its invalidity and the consequent unfair labor practices can only be established by reliance on evidence of events which occurred more than 6 months before the filing of the charge. This Congress expressly precluded by Section 10 (b).

¹⁰ NLRB v. Broderick Wood Prod. Co., 261 F. 2d 548 (10th Cir. 1958).

¹¹ 261 F. 2d at 559, quoting Virginia Elec. & Power Co. v. NLRB, 319 U.S. 533, 540 (1943).

It is well established that in making unfair labor practice findings the Board cannot rely solely on events which occurred more than 6 months before the filing of the charges, even though evidence as to such events is admissible for background purposes; and this is so even though the effect of such events continues to be felt within the 6-month period.

One of the principal purposes of a statute of limitations is to bring repose. As stated in *NLRB v. Pennicore, Inc.*, 194 F. 2d 521, 524 (3d Cir. 1952), the rationale underlying such a statute is to prevent "people . . . being brought to book upon stale charges." Consistently with this, the period of limitations in the Taft-Hartley Act must have been deliberately adopted by Congress to aid in stabilizing labor relations by precluding adversary proceedings based on events which had laid dormant for six months. Under the decision of the court, however, there is no limit whatsoever to the time that might pass, with countless changes in the details of relations and obligations, without a complaint being barred, although proof of the true basis of illegality of the conduct complained of lies in the years that are gone. This seems to me inconsistent with the Congressional policy expressed in § 10(b).

We are not concerned now with the hypothetical case postulated by the court in which a collusive contract is not enforced for six months after its execution so as to evade the statute of limitations. I think that would present a different legal problem.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1958

No. 14,257

LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; and INTERNATIONAL ASSOCIATION
OF MACHINISTS AFL-CIO, *Petitioners*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 14,324

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

BRYAN MANUFACTURING COMPANY, *Respondent*.

On Petition to Review and Set Aside and on Petition to
Enforce an Order of the National Labor Relations Board

Before: PRETTYMAN, Chief Judge, and FAHY and BURGER,
Circuit Judges.

Judgment

These cases came on to be heard on the record from the
National Labor Relations Board, and were argued by
counsel.

ON CONSIDERATION WHEREOF, it is ordered by this court
that in No. 14,257 the petition for review of the order of
the National Labor Relations Board is dismissed; and

It is further ORDERED and ADJUDGED that in No. 14,324
the petition for enforcement of the order of the National
Labor Relations Board in this case is granted and the
order will be enforced.

Pursuant to Rule 38(1) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with this judgment.

PER CIRCUIT JUDGE BURGER.

Dated: February 27, 1959.

Separate dissenting opinion by Circuit Judge Fahy.

~~SECRET~~
BRIEF FOR THE NATIONAL
LABOR RELATIONS BOARD

IN CONNECTION WITH

FILE COPY

Office-Supreme Court, U.S.

FILED

APR 17 1950

JAMES E. HUGHES, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1949

LOCAL LODGE NO. 1434, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, INTERNATIONAL ASSOCI-
ATION OF MACHINISTS, AFL-CIO, AND BRYAN MANU-
FACTURING COMPANY, PETITIONERS

NATIONAL LABOR RELATIONS BOARD

OF PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

WRIT FOR THE NATIONAL LABOR RELATIONS BOARD IN
OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No 780

**LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, AND BRYAN MANU-
FACTURING COMPANY, PETITIONERS**

v.

NATIONAL LABOR RELATIONS BOARD

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT**

**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN
OPPOSITION**

OPINIONS BELOW

The opinion of the court of appeals (Pet. 1a-13a) is not yet reported. The decision of the National Labor Relations Board (R. 325-461) is reported at 119 N.L.R.B. 502.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 1959 (Pet. 14a-15a). The petition for a writ of certiorari was filed on March 18, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

Within six months of the filing and service of the charges in this case, the Company and the Union required employees to join the Union as a condition of employment. The Board found that this conduct constituted an unfair labor practice. The Company and the Union predicated their defense to this unfair labor practice on a contract requiring union membership as a condition of employment, which contract was entered into over six months before the filing and service of the charges. The questions presented are:

1. Whether the Board was precluded by Section 10(b) of the Act (which precludes issuance of a complaint based upon any unfair labor practice occurring more than six months prior to the filing and service of the charge) from determining the validity of the contract asserted as a defense.

2. Whether the Board's order requiring the Company and the Union to reimburse the employees for dues and initiation fees checked off pursuant to the contract was valid and proper.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 15-17).

STATEMENT

1. In August 1954, the petitioners (International Association of Machinists and its Local Lodge 1424, herein jointly called IAM or the Union, and Bryan Manufacturing Company, herein called the Company) executed a contract under which the Company recog-

nized the Union as the exclusive representative of the Company's employees at Reading, Michigan. The contract also provided that all Reading employees had to join and remain members of the Union, and further provided that upon receiving "a signed authorization from the employee involved" the Company would deduct his union initiation fee and dues from his wages and pay them directly to the Union (R. 283-285). At the time the Company executed this contract, the IAM did not in fact represent any of the employees in the plant. (Even the members of the Union's "Temporary Bargaining Committee" were selected at random by the Company and were not IAM adherents at the time (R. 151-155, 157, 209). After the contract was executed, however, the employees joined the Union in accordance with the contract's requirements. As several employees testified, they "had to," they "had no other choice" (R. 155-156, 113, 135, 203).

One year later, the Company and the Union renewed their contract in all material respects and extended it to cover a second plant, opened to relieve the overcrowded Reading plant, where employment had more than doubled during the year (R. 45, 187-188, 302-303, Pet. 5).

The Company and the Union have continually enforced the Union membership and checkoff provisions of the contracts, and every employee who has been with the Company 45 days or more has had his dues checked off to the IAM (R. 195, 255-256).

2. In June and August 1955, while the original contract was in effect, unfair labor practice charges were

filed and served alleging that the Company and the Union were requiring employees to join, and remain members of, the Union as a condition of employment, and that the contract, which purported to legitimize this conduct, was invalid (R. 260-262, 265-266).

Following the customary proceedings, the Board, affirming the Trial Examiner, held that petitioners violated Section 8(a) (1), (2) and (3) and 8(b) (1)(A) and (2) of the Act (R. 430-437). Section 8(a) (1), (2), and (3) provides that employers may not coerce employees into union membership, or contribute support to labor organizations, or encourage union membership by discriminatory treatment of employees; and Section 8(b) (1)(A) and (2) provides that unions may not coerce employees into becoming members or cause employers to encourage union membership by discriminatory treatment of employees. In holding that petitioners violated these sections, the Board rejected the contention that petitioners had a lawful contract requiring union membership in accordance with the proviso to Section 8(a)(3) (*infra*, pp. 15-16). The Board held that the contract failed to meet the requirements of the statute as the Union did not represent any employees at the time it was executed, and that implementation of the contract was therefore violative of the Act (*ibid.*). In so holding, the Board, with two members dissenting, held that the six-months limitation proviso of Section 10(b) operated to prevent the Board from finding that the *execution* of the contract was an unfair labor practice but did not preclude the Board from relying on facts existing at the time the contract was ex-

executed to show that the contract was invalid and no defense to unfair labor practices committed within the six-months period.

The Board ordered the Company and the IAM to cease and desist from giving effect to their contract, and directed the Company to withhold recognition from the IAM, unless and until it was certified as the bargaining representative of the employees (R. 437-440). The Board further ordered the Company and the IAM to cease and desist from entering into, maintaining, or renewing any union security agreement, which failed to meet the requirements of Section 8(a)(3), and from in any like or related manner invading employee rights under Section 7 of the Act (*ibid.*). The Board also ordered both parties to stop giving effect to any checkoff cards, and jointly and severally to reimburse employees for any dues or initiation fees checked off pursuant to any agreement between the parties (R. 441-442).¹ Finally, the order directs both parties to post appropriate notices (R. 439-442, 457-461).

3. The court of appeals, with Judge Fahy dissenting, sustained the Board's order (Pet. 1a-13a). The court observed that, while the contract was executed outside the limitations period, its enforcement within the period by compelling employees to join the Union was an unfair labor practice cognizable by the Board,

¹ The Company's liability for reimbursement of dues and initiation fees commences December 10, 1954 (six months prior to the service of the charge upon the Company), and the Union's liability commences February 8, 1955 (six months before service of the charge upon the Union) (R. 442, 260-266).

for the six-month proviso creates a period of limitations, not a rule of evidence (Pet. 6a-7a). Noting that the compulsion of union membership was regularly repeated within the six-month period, the court held that the Board could look to events prior to the six-month period to determine whether conduct within that period was lawful (Pet. 8a). As the Board's order did not depend upon any legal conclusion with respect to events outside the statutory period, the court held that the Board did not violate the limitations, proviso by drawing upon facts occurring over six months before the charge (Pet. 10a-11a). Finally, the court below sustained the Board's order directing the reimbursement of dues, noting, in agreement with the Tenth Circuit, that the order "should stand unless there is a showing that [it] is a patent attempt to achieve ends not designed to fairly effectuate the policies of the Act." *National Labor Relations Board v. Broderick Wood Products Co.*, 261 F. 2d 548, 559.

ARGUMENT

1. The holding of the court below that the Board could properly find that a contract, executed over six months before the charge, was invalid and furnished no defense to unfair labor practices committed within six months of the charge accords with the holdings of other courts and presents no important issue warranting review.

Petitioners do not deny that the contract when executed failed to satisfy the statutory requirements for such union security agreements. However, relying on Section 10(b) which provides that "no complaint

shall issue based upon any unfair labor practice occurring more than six months prior to the filing [and service] of the charge," they contend that the Board is barred from finding invalid their union security agreement executed over six months before the charge.

But the statute precludes the Board only from finding an unfair labor practice over six months before the charge; it does not preclude using evidence over six months old to establish violations within the six-month period. Here the violation—compelling employees to join the Union—occurred within¹ six months of the charge, and the limitations proviso is therefore inapplicable. Petitioners, claiming that they could lawfully compel union membership under their contract, in effect urge it as a defense to what is otherwise a plain violation of the statute. Nothing in the limitations provision, however, prevents the Board from showing the invalidity of the contract asserted as a defense.²

This view of the limitations proviso has been adopted also in the only two other cases which have raised this problem in the twelve-year history of the amended Act. *National Labor Relations Board v. Gaynor News Co.*, 197 F. 2d 719, 722 (C.A. 2), affirmed, 347 U.S. 17; *Katz v. National Labor Rela-*

² In characterizing the contract as a "defense" we do not mean to imply that the burden of proving validity of the agreement is on the parties thereto. Admittedly the Board has the burden of establishing the facts which show that the agreement was invalid. In this case, however, the proof of invalidity (i.e., lack of IAM majority at time of execution) is so overwhelming that petitioners conceded the point in the court below (P.t. 2a) and do not dispute it here.

tions Board, 196 F. 2d 411, 415 (C.A. 9).³ See also *Paramount Cap Mfg. Co. v. National Labor Relations Board*, 260 F. 2d 109, 112-113 (C.A. 8). Contrary to petitioners' contention (Pet. 14-15), the decision in *American Federation of Grain Millers v. National Labor Relations Board*, 197 F. 2d 451, 454 (C.A. 5) does not conflict with the decision below. In *Grain Millers*, to have found an unfair labor practice within the statutory period, the Board would have had to make an express finding that another unfair labor practice had been committed outside the six-month period. See also *National Labor Relations Board v. Dallas General Drivers*, 228 F. 2d 702, 704 (C.A. 5). In both *Grain Millers* and this case, unfair labor practices were committed outside the statutory period, but in *Grain Millers* that legal conclusion was necessary to finding a violation within the period, whereas in this case no such legal conclusion need be drawn with respect to the earlier conduct.⁴

In trying to bring themselves within the "words" and "purpose" of the limitations proviso (Pet. 17), petitioners present the case as though the unfair

³ Petitioners would distinguish those cases on the ground that the invalidity of the union security agreement was provable by a fact existing within the six-month period, namely, the lack of a certificate of authorization (Pet. 16, n. 4). This distinction, if such it be, is not reflected in the rationale of those cases. Assuming the distinction, the instant case stands as the only one to raise this issue.

⁴ Petitioners suggest that the instant case is related to *National Labor Relations Board v. Fant Milling Co.*, No. 482, this Term (Pet. 13-14). No conflict is claimed; the relationship is merely that both cases concern the limitations proviso, but in widely different application.

labor practice found was the execution of the contract. In fact the unfair labor practice was the compelling of union membership within the six-month period, to which the invalid contract furnished no defense. The purpose of the limitations proviso was not to exclude evidence but to limit the period of liability. Compare *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 705, referring to "the established judicial rule of evidence, that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny." See also *National Labor Relations Board v. Clausen*, 188 F. 2d 439, 443 (C.A. 3), certiorari denied, 342 U.S. 868;⁵ *National Labor Relations Board v. General Shoe Co.*, 192 F. 2d 504, 507 (C.A. 6), certiorari

⁵ The court in *Clausen* expressly approved the Board's holding in *Axelson Mfg. Co.*, 88 N.L.R.B. 761, 766, where the Board stated:

" * * * Section 10(b) enacts a statute of limitations and not a rule of evidence. It forbids the issuance of complaints and, consequently, findings of violation of the statute in conduct not within the 6 months' period. But it does not * * * forbid the introduction of relevant evidence bearing on the issue as to whether a violation has occurred during the 6 months' period. Events obscure, ambiguous, or even meaningless when viewed in isolation may, like the component parts of an equation, become clear, definitive, and informative when considered in relation to other action. * * * Congress can scarcely have intended that the Board, in the performance of its duty to decide the validity of conduct within the 6 months' period, should ignore reliable, probative, and substantial evidence as to the meaning and nature of the conduct. Had such been the intent it seems reasonable to assume that it would have been stated."

denied, 343 U.S. 904; *Paramount Cap Mfg. Co. v. National Labor Relations Board*, 260 F. 2d 109, 112-113 (C.A. 8); *National Labor Relations Board v. Brown & Root, Inc.*, 203 F. 2d 139, 145-146 (C.A. 8); *Superior Engraving Co. v. National Labor Relations Board*, 183 F. 2d 783, 791 (C.A. 7), certiorari denied, 340 U.S. 930. Petitioners, in short, overlook the settled distinction between statutes of limitations, which preclude liability for past conduct, and ordinary principles governing the weight of evidence, under which remoteness in time affects probative value but not admissibility. Cf. *People v. Cuevas*, 18 Cal. App. 2d 151, 63 P. 2d 311, 312; *Purviance v. State*, 185 Md. 189, 44 A. 2d 474, 477-478.*

Petitioners' reliance on the legislative history of certain appropriation riders (Pet. 19-22) is equally unavailing. In the first place, petitioners concede (Pet. 24-25), and numerous cases establish, that where the union shop agreement is invalid on its face, the Section 10(b) limitations period is inapplicable. Under the appropriation riders relied on by petitioners, however, the agreement would be immune to challenge even where its invalidity was patent.

* For this reason petitioners' alleged concern over the fate of collective bargaining agreements (Pet. 12-13), in an attempt to create an aura of importance around this unique situation, would appear to be insubstantial. As we have seen, this problem has not troubled either the Board or the courts. In general, existing union security contracts may be presumed to be valid, and the burden of proving their invalidity would rest on the Board, subject to ordinary rules of evidence concerning events remote in time.

* See, e.g., *National Labor Relations Board v. F. H. McGraw & Co.*, 206 F. 2d 635, 639 (C.A. 6), and cases cited.

Thus petitioners' own concession, required by settled authority, establishes that the early appropriations riders on which they rely had far broader sweep than Section 10(b). Second, the petition overlooks the National Labor Relations Board Appropriation Act, 1948 (61 Stat. 276), which was enacted contemporaneously with the Taft-Hartley amendments. That Appropriations Act expressly provided that the limitations period was applicable only to contracts between an employer and a union representing a majority of his employees. That provision, added as a "rider" while the Appropriations Act was before the Senate Committee (cf. Pet. 20, n. 7), was the "rider to the current appropriations bill" which Section 10(b) rendered unnecessary. (Pet. 19-20; see 93 Cong. Rec. 4499).^{*} Thus, it is petitioners' contention, and not the Board's, which attributes absurdity to Congress (Pet. 22-23). Petitioners would have it that Congress at 61 Stat. 276 enacted an appropriations rider which granted immunity only to contracts executed with majority unions, and at 61 Stat. 136, 146, enacted a statute which granted immunity to contracts regardless of the union's majority status.

2. Having found that petitioners unlawfully compelled all the employees to join the Union as a con-

^{*} The "rider" was introduced by Senator Ball, who was also a member of the committee reporting out the Taft-Hartley amendments. 93 Cong. Rec. 4499. When the latter committee referred to a "rider to the current appropriations bill" (Pet. 19-20), it presumably referred to the Ball rider; otherwise it would have referred to the then existing appropriations act (60 Stat. 698).

dition of employment, the court below held that the Board's remedy for the unfair labor practice, including the refunding of dues which the Company withheld from the employees and paid to the Union under the checkoff provisions of the contract, was within the Board's broad discretion. *Virginia Electric Co. v. National Labor Relations Board*, 319 U.S. 533, 539-540; *National Labor Relations Board v. Seven-Up Bottling Co.*, 344 U.S. 344, 346-347. Petitioners' suggestion that this is a "recent innovation" (Pet. 33) is wide of the mark, as similar orders have been approved in a host of cases.⁹ There is no conflict of authority and none is claimed.

Petitioners' contention (Pet. 33) that the reimbursement remedy is limited to cases of company-dominated unions has been rejected by every court of appeals which has considered the question. See cases in n. 9, *infra*; cf. *National Labor Relations Board v. Braswell Motor Freight Lines*, 213 F. 2d 208, 209 (C.A. 5); *National Labor Relations Board v. Shedd-Brown Mfg. Co.*, 213 F. 2d 163, 170-171 (C.A. 7). The validity of the reimbursement order turns on whether the employees were compelled to join the Union, not on whether the Union was "dominated" or merely "assisted." Similarly, petitioners' arguments that the employees derived benefits from union

⁹ *Virginia Electric*, *supra*; *National Labor Relations Board v. Broderick Wood Products Co.*, 261 F. 2d 548, 558-559 (C.A. 10); *National Labor Relations Board v. Parker Bros. & Co.*, 209 F. 2d 278, 280 (C.A. 5); *National Labor Relations Board v. Local 404*, 205 F. 2d 99, 104 (C.A. 1); *National Labor Relations Board v. Baltimore Transit Co.*, 140 F. 2d 51, 57-58 (C.A. 4), certiorari denied, 321 U.S. 795.

representation and that some of them might have joined the Union voluntarily (Pet. 30-32) do not distinguish this case from the others in which this remedy has been judicially approved. Apparently petitioners would limit reimbursement to those employees who testified they felt coerced. But employee testimony on this issue would be of little worth (cf. *Radio Officers Union v. National Labor Relations Board*, 347 U.S. 17, 51; *National Labor Relations Board v. Donnelly Garment Co.*, 330 U.S. 219, 231), and in any event the burden rested upon petitioners "to disentangle the consequences" of their unlawful conduct. *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. 2d 862, 872 (C.A. 2), certiorari denied, 304 U.S. 576; see also *F. W. Woolworth Co. v. National Labor Relations Board*, 121 F. 2d 658, 663 (C.A. 2); *National Labor Relations Board v. Swinerton*, 202 F. 2d 511, 515-516 (C.A. 9), certiorari denied, 346 U.S. 814; *National Labor Relations Board v. Stackpole Carbon Co.*, 105 F. 2d 167, 176 (C.A. 3).

CONCLUSION

For the reasons stated above the petition for writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1959.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a)

of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h). * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; * * *

SEC. 10. (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated

agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made * * *.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *.

UNIT FOR THE

AMERICAN FEDERATION
OF LABOR AND CONGRESS
INDUSTRIAL ORGANIZATIONS
AS UNIONS
CURTIS

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

NO. 44

LOCAL LODGE NO. 1424, INTERNATIONAL
ASSOCIATION OF MACHINISTS, AFL-CIO,
INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, AND
BRYAN MANUFACTURING CO., *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF
LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided in Rule 42 of the Rules of this Court.

The present case gives this Court its first opportunity to appraise the so-called *Brown-Olds* remedy¹ of the National Labor Relations Board. Typically, this remedy requires the

¹ The name comes from *Brown-Olds Plumbing & Heating Corp.*, 115 NLRB 594 (1956), the first case in which the Board extended the mass refund remedy to a situation not involving a company-dominated or company-supported union.

reimbursement of all union dues and fees collected from employees pursuant to a union-security or hiring hall arrangement which the Board determines to be illegal. The practical implications of this new doctrine are staggering. Severe financial hardship, and in some instances financial ruin, is the imminent prospect for many locals affiliated with member unions of the AFL-CIO. Especially affected are unions engaged in the building and construction trades, and other unions operating hiring halls for employees. The AFL-CIO is therefore vitally interested in placing before this Court an outline of the scope of the *Brown-Olds* remedy and its impact on labor unions generally. Not all of the doctrine's ramifications are brought to the fore in this particular case. This is a further reason why the Federation has a special interest in demonstrating to the Court that the formulation and application of this remedy by the National Labor Relations Board, in this case and in many other similar cases for which the decision here might be controlling, is a patent abuse of administrative discretion.²

ARGUMENT

The Board's *Brown-Olds* remedy poses two related, but logically distinct, issues: first, the extent of the power pos-

² The Federation is no less interested in seeing the petitioners prevail in their contention, that the six-month period of limitations contained in section 10(b) of the National Labor Relations Act bars the issuance of a complaint in cases such as this. We do not treat this issue, however, because we feel that its implications are amply exposed by the case before the Court, and that any arguments we might add to petitioners' would be merely cumulative. We fully endorse petitioners' view that the decisions of the Board and of the Court of Appeals below on this point subvert the philosophy of the limitations period as an instrument of repose, and that they fly in the face of the Congressional policy of "stabilizing labor relations by precluding adversary proceedings based on events which had laid dormant for six months." Fahy, J., dissenting below, *Local Lodge No. 1424, International Association of Machinists v. NLRB*, 264 F. 2d 575, 583 (D.C. Cir. 1959).

essed by the Board to "support pivotal assumptions" with administrative "expertise alone,"³ and secondly, the breadth of the discretion lodged with the Board to frame appropriate remedial orders. We submit that the *Brown-Olds* remedy stands condemned when viewed in either light.

The reimbursement remedy is not bottomed on reasonable inferences regarding the facts. It is based on a per se doctrine of inherent coercion, which is unsupported by and indeed contrary to historical and economic data, and which is accompanied by a blithe refusal by the Board even to consider direct evidence contradicting its fallacious assumptions. Furthermore, the remedy itself constitutes an abuse of the Board's discretion to frame appropriate orders. It amounts to a mechanical application of a formula that fails to take account of the infinite complexities of situations in the labor-management field. Its operation is oppressive and capricious, causing only slight inconvenience to some unions and financial ruin to others. Finally, the remedy is essentially punitive rather than remedial, being likened even by Board personnel to a "meat-axe" or a "big stick" with which to enforce Board mandates on hiring halls.

I. The Board's Brown-Olds Remedy Is Based On An Unreasonable Inference That All Union Dues And Fees Collected Pursuant To An Illegal Union-Security Or Hiring Hall Arrangement Constitute Coerced Payments.

A. LACK OF REASONABLE BASIS OR OF HISTORICAL OR ECONOMIC DATA TO SUPPORT INFERENCE OF COERCION

We do not contest the existence of the Board's power to draw "reasonable inferences from proven facts." *Radio Officers' Union v. NLRB*, 347 U.S. 17, 49. We do not contest the Board's right to use its "cumulative experience" in

³ See *Harrell v. FCC*, 267 F. 2d 629, 632 (D. C. Cir. 1959).

fashioning a remedy, so long as there is exercised due "regard to circumstances which may make its application to a particular situation oppressive * * *." *NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344, 349. At the same time we consider it beyond cavil that the Board cannot indulge in "mere conjecture" or "extravagant and unwarranted assumption." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 238. Board inferences are to be "reasonable," as this Court stated eight separate times in the course of four pages of its opinion in *Radio Officers*, *supra*, 347 U.S. at 49-52.

The legislative history of the Taft-Hartley Act emphasizes the concern of Congress that the courts should apply a check to any unreasonable inferences on the part of the Board. The role contemplated for reviewing courts under the 1947 amendments to section 10 of the National Labor Relations Act⁴ was spelled out in the following terms in the House Conference Report:

"* * * they [the courts] will be under a duty to see that the Board observes the provisions of the earlier sections, that it does not infer facts that are not supported by evidence or that are not consistent with evidence in the record, and that it does not concentrate on one element of proof to the exclusion of others without adequate explanation of its reasons for disregarding or discrediting the evidence that is in conflict with its findings. The language also precludes the substitution of expertness for evidence in making decisions."⁵

⁴ Sec. 10(e) of the original National Labor Relations Act, 49 Stat. 454, provided in part: "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." Sec. 10(f) was similarly worded.

Sec. 10(e) of the National Labor Relations Act, as amended, 61 Stat. 148, 29 U.S.C. § 160(e), provides in part: "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." Sec. 10(f) is similarly worded.

⁵ H.R. Rep. No. 510, 80th Cong., 1st Sess., p. 56.

In *Brown-Olds Plumbing & Heating Corp.*, 115 NLRB 594 (1956), the Board ordered a union to reimburse all dues and assessments collected under a closed-shop contract. Although the evidence disclosed only one named individual who had been discriminated against, the Board justified its sweeping order covering all employees with the flat assertion: "Dues and assessments here collected constituted the price these employees paid in order to retain their jobs." *Id.* at 601. Primary reliance for this decision was placed on *Virginia Electric and Power Co. v. NLRB*, 319 U.S. 533, where this Court approved a Board reimbursement order against a company in 1943.

Virginia Electric was a far different situation. Coloring every other aspect of the case was the fact that it involved a company-dominated union, "a type of organization," as expressly noted by this Court, "which Congress has characterized as detrimental to the interests of employees and provocative of industrial unrest." 319 U.S. at 544. The company-dominated union had entered a closed-shop and compulsory check-off arrangement with the company, whereby payments went "into the treasury of the Company's creature to accomplish purposes the Company evidently believed to be to its advantage." *Ibid.*

Mr. Justice Frankfurter, concurring in *Virginia Electric*, underscored the need for evidence of coerced payments in order to support the refund order. He distinguished *Western Union Tel. Co. v. NLRB*, 113 F. 2d 992 (2d Cir. 1940), where Judge Learned Hand had refused to enforce a reimbursement order even against a company-dominated union, on the ground that in *Western Union* "there was no evidence that all those [employees] who asked to have their wages stopped, did so in any part because they were coerced." 319 U.S. at 545, quoting 113 F. 2d at 997. In *Virginia Electric*, on the other hand, observed Mr. Justice Frankfurter:

“* * * not only did it [the Company] foster that company union, it foisted membership in the union upon all its employees. The Board had a right to find that membership in the union, which the employees had no power to reject, equally denied the employees the power to reject the costs of that membership.” 319 U.S. at 545. (Emphasis supplied.)

Thus, there were two salient factors in *Virginia Electric* which, taken together with the closed-shop and compulsory check-off arrangement, justified the Board's inference or conclusion that the employee payments were coerced:

1. The union was company-dominated.⁶ Congress, as the Court was aware, had recognized the evils of this institution. And labor history was replete with the shortcomings of company unions, with their impotence in times of stress and with their frequent betrayal of their members' interests.⁷ It would be wholly reasonable under the circumstances of *Virginia Electric* to infer that the employees would not have associated with such a caricature of a union had they had unfettered choice, and to infer instead that membership was “foisted” on them.

2. The employees had no readily available means to reject the company-dominated union. Mr. Justice Frankfurter emphasized this fact in his concurrence. *Virginia Electric* was decided in 1943. Not until the Taft-Hartley amendments of 1947 was there a clear-cut method by which employees could secure “decertification” of a collective bargaining representative, or rescission of a collective bargaining representative's authority to make a union-security agreement with their employer.⁸

⁶ Millis and Montgomery, *The Economics of Labor: Organized Labor*, vol. III, pp. 879-886 (1945); Dulles, *Labor in America*, pp. 261, 277 (1949).

⁷ See § 9 (c) and (e) of the National Labor Relations Act, as amended, 61 Stat. 144-145, 29 U.S.C. §159 (c), (e); H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 35.

Neither of these salient factors is present in this case, or in the usual case in which the *Brown-Olds* remedy has been applied.

In none of the cases in which the AFL-CIO is interested, of course, is there a company-dominated union. In *Brown-Olds* itself, and in most of the cases applying the mass reimbursement remedy, there has been no question about the legal status of the union as the representative of the majority of the employees on the job. It is true that the present case involves a union designated by less than half the employees on the job at the inception of the union-security arrangement. But as petitioners point out, in this case also the employees at all times had it within their power, by virtue of the 1947 Taft-Hartley amendment, to revoke their union's authority to make such a union-security agreement. These employees, like the employees in other *Brown-Olds* cases, were not lacking in the "power to reject" their union, as were the employees in *Virginia Electric*. Yet no "deauthorization" petition has ever been filed by the employees here involved.

The short of the matter is that only one premise could conceivably support the Board's inference that *all* dues and fees collected pursuant to an illegal union-security or hiring hall arrangement amount to coerced payments even when collected by a free, vigorous union not dominated by any company. That premise, which the Board has never seen fit to articulate, is simply this: No working man would join a labor union and pay dues to it unless he was compelled to do so by a union-security agreement.

To buttress this "extravagant and unwarranted assumption," the Board (so far as we know) has never deigned to cite a single historical study or a single economic survey. Indeed it could not. The whole history of the American labor movement stands ready to refute any such conten-

tion.* Working men join unions for mutual assistance, for social reasons, and for such financial benefits as group insurance and pensions; but primarily they unite to achieve bargaining parity with their employers. In *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 209, Chief Justice Taft succinctly put the matter in perspective:

"A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer."

Statistical data which the NLRB itself has published illustrate graphically the unreasonableness of the Board's inference of mass coercion. From 1947 to 1951, when the provision was repealed as unnecessary, a proviso to section 8(a)(3) of the National Labor Relations Act required

* On workers' motives for organizing on both a local and national scale, see Commons and Associates, *History of Labor in the United States*, vol. I, pp. 169-184, 575-576 (1918), vol. II, pp. 43-48, 301-306 (1918), vol. IV, pp. 621-630 (1935); Millis and Montgomery, *The Economics of Labor: Organized Labor*, vol. III, pp. 354-359 (1945); Taft, *The A. F. of L. in the Time of Gompers*, pp. 1-13 (1957); Dulles, *Labor in America*, pp. 98-100 (1949). It is simply not the fact that a vague abstraction called a "union" coerces employees into membership, and tries to keep work from nonunion labor. Working men themselves have traditionally banded together and sought to prevent competition from cheap, substandard labor by means of the union shop or some analogous method for protecting their jobs and preserving craft standards. The experience of a hundred years attests this. Commons, *supra*, vol. I, pp. 596-600. As late as the 1930s laboring men in many industries had to prove their steadfastness to the principles of organization by running a grim gauntlet of employer goon squads, labor spies, and economic reprisals. See Millis and Montgomery, *supra*, vol. III, pp. 604-612; Rayback, *A History of American Labor*, pp. 343-344 (1959).

specific authorization by employees before their collective bargaining representatives could enter into union-security agreements. The following is a tabulation of the results of the Board's union-shop authorization polls during this period:*

Union-Shop Authorization Elections

Fiscal Year	Valid Votes	Votes for Union Shop	% for Union Shop
1947	1,629,330	1,534,980	94.2
1948	1,471,092	1,381,829	93.9
1949	900,866	805,189	89.4
1950	1,335,683	1,164,143	87.2

The inescapable conclusion is that the overwhelming majority of workers voluntarily embrace union conditions. In the light of historical experience and of the Board's own experience with these union-security authorization elections, any other inference, we submit, is patently "unreasonable" within the meaning of *Radio Officers, supra*, 347 U.S. at 48-52. The Board's finding that all employees in *Brown-Olds* cases have been coerced into paying dues is thus not supported by the "substantial evidence on the record considered as a whole" which is required by section 10(e) and (f) of the National Labor Relations Act.

B. THE BOARD'S IRREBUTTABLE INFERENCE; THE DOCTRINE OF PER SE COERCION

The Board has not rested content with drawing the unreasonable inference that all employees in *Brown-Olds* situations have been coerced into paying dues. It has proceeded to amplify the doctrine in subsequent decisions,

* See NLRB Thirteenth Annual Report, p. 111 (1948); NLRB Fourteenth Annual Report, p. 172 (1949); NLRB Fifteenth Annual Report, p. 235 (1950); NLRB Sixteenth Annual Report, p. 306 (1951).

holding that an illegal hiring practice or unlawful union-security provision "inevitably coerced all employees * * * to become or remain members of the Union," *Saltsman Construction Co.*, 123 NLRB No. 142, 44 LRRM 1085, 1086 (1959), and "is sufficient in and of itself to establish the element of coercion in the payment of monies by employees * * * whether or not proof of actual exaction of payments is established," *Nassau and Suffolk Contractors' Assn.*, 123 NLRB No. 167, 44 LRRM 1138, 1139 (1959).

This doctrine of per se coercion has been carried to its logical conclusion. In *United States Steel Corp. (American Bridge Division)*, 122 NLRB No. 155 (1959), the Board applied the *Brown-Olds* reimbursement remedy against a union despite the fact that the remedy was never sought by the General Counsel at any stage of the proceeding and despite the fact that the Trial Examiner's Intermediate Report was favorable to the union. On April 3, 1959 the union filed with the Board, in NLRB Cases Nos. 4-CA-1514 and 4-CB-373, a motion to reopen the proceedings "to receive evidence as to employees who voluntarily paid dues and initiation fees to Respondent Union during the period in question and were not in fact required to do so in order to secure or retain employment with Respondent Company." (Motion for Modification, etc., para. 14.) On May 4, 1959, by direction of the Board, the Board's Executive Secretary entered an order denying the union's motion, "on the ground that nothing has been presented that was not previously considered by the Board." (Order Denying Motions, p. 2.)

The final step in this perversion of logic was taken by a Trial Examiner in *Lummus Corp.*, NLRB Case No. 4-CB-384, in an Intermediate Report on August 10, 1959. Faced with the threat of a *Brown-Olds* order, the union had made an offer of proof at the hearing before the Trial Examiner. The Intermediate Report described this offer as "primarily

in the form of testimony of members of the Respondent [Union] and financial statements, to establish that . . . union members were not coerced by the unlawful contract but instead paid dues and other fees to the Local voluntarily" (Mimeo. copy, p. 8.) Citing *Nassau and Suffolk* and *Saltsman* for the proposition that "an unlawful exclusive hiring contract inevitably coerces employees," the Trial Examiner rejected the proffered evidence. *Ibid.* (Emphasis in the original.)

The full dimensions of the *Brown-Olds* doctrine now stand revealed.¹⁰ Upon the *a priori* proposition that workers would not join unions but for the existence of union-security arrangements, a proposition plainly at variance with history and recent empirical data, the Board and its Trial Examiners have erected a per se doctrine of "inevitable coercion" of dues payments. And they have insulated their jerry-built structure from any contact with the disturbing world of reality by refusing even to consider evidence which would contradict factually the conclusions reached through their unreasonable inferences.¹¹

¹⁰ We of course realize that the Court will only decide this case on the record before it. The process of decision should be enhanced, however, by viewing this particular situation in its proper setting of general Board policy. Furthermore, the NLRB itself undoubtedly regards the *Brown-Olds* remedy as a definitive formula of general application. Consequently, if the Court in this case should reach the issue of the dues reimbursement award, its decision would almost certainly have far-reaching implications regarding the whole refund doctrine. Thus it seems appropriate that the Court should be aware of the proportions this doctrine has assumed.

¹¹ The Board has introduced inconsistency into its reasoning by allowing itself the luxury of contemplating at least a segment of reality in situations where such indulgence would not disturb its *a priori* rules for applying the *Brown-Olds* remedy. Thus, in *Anchorage Businessmen's Assn.*, 124 NLRB No. 72 (1959), the Board refrained from invoking the refund order where a union-security contract was invalid merely because of a technical violation of the filing requirements of section 9(f), (g), and (h) of the National Labor Relations Act. The Board said it would not re-

No apology is made by the Board for this approach. In the brief for the NLRB filed in June, 1959 in *Local 357, International Brotherhood of Teamsters v. NLRB*, No. 14,794 (D.C. Cir.), it is stated:

"And, in any event, the propriety of the Board's reimbursement order manifestly is not defeated because some employees may have made these payments voluntarily. * * * For the Supreme Court has declared that where the 'inherent effect' of union or employer conduct is coercive, as here, not even the subjective evidence of employees to the contrary will avail the wrongdoer." (Brief for the NLRB, pp. 50-51.)

quire reimbursement for this reason, and for the additional reason that "all the pharmacists in the area had joined the Independent before the execution of the union security contract and therefore must be presumed to have paid the initial dues and fees voluntarily, rather than under the compulsion of such contract." 44 LRRM 1453, 1457.

Yet in *United States Steel Corp. (American Bridge Division)*, discussed *supra*, p. 10, the union sought in vain to reopen the proceedings with the averment, *inter alia*, "that many employees had paid dues in advance of their employment by Respondent Company in accordance with past practice extending over many years and for reasons other than to secure or retain employment with Respondent Company * * *." (Motion for Modification, etc., para. 12.)

And in *Saltsman Construction Co.*, 123 NLRB No. 142, 44 LRRM 1085, 1086 (1959), the Board declared: "We do not agree [with the Trial Examiner] that the remedy of reimbursement should be limited to those employees who became members of the Union after beginning employment. * * * the illegal practice * * * inevitably coerced all employees * * * to become or remain members of the Union."

Perhaps not without significance as a key to the present Board's philosophy is the fact that, just two years before the Board initiated in *Brown-Olds* its doctrine of per se coercion of union dues payments, it repudiated a line of its own decisions which had held that employer interrogation of employees concerning their union affiliation or activities was per se unlawful. *Blue Flash Express, Inc.*, 109 NLRB 591, 593 (1954), expressly overruling *Standard Coosa-Thatcher Co.*, 85 NLRB 1358 (1949).

Cited as a basis for this assertion are this Court's decisions in *Radio Officers Union v. NLRB*, 347 U.S. 17, and *NLRB v. Donnelly Garment Co.*, 330 U.S. 219. We feel that these decisions, fairly considered, refute rather than support the Board's contentions.

In *Donnelly Garment* the Board had been instructed by a Court of Appeals to admit and consider testimony by a company's employees that they had voluntarily organized and joined a union which the Board had charged was company-dominated. After a painstaking examination, this Court concluded that the Board had in fact obeyed the mandate of the Court of Appeals, even though the Board was left still convinced that the union was company-dominated. At no point did this Court suggest that "subjective evidence" was not a factor. Indeed it expressly noted that it was "not called upon to lay down a general rule of materiality regarding such testimony." 330 U.S. at 231. And of course *Donnelly* involved the admissibility of testimony regarding a union alleged to be company-dominated.

Radio Officers, we grant, upholds the power of the Board to draw "reasonable inferences from proven facts," without the necessity in every instance of having "subjective evidence of employee response." 347 U.S. at 49, 51. But nowhere is there any indication that the Board is authorized to draw an inference in splendid disregard of proven fact. Nowhere is there any indication that the Board may make such an inference irrebuttable by refusing even to consider proffered testimony in contradiction of it. Especially pertinent on this point are the words of Mr. Justice Frankfurter, concurring in *Radio Officers* in an opinion in which he was joined by Mr. Justice Burton and Mr. Justice Minton:

"But that should not obscure the fact that this inference may be bolstered or rebutted by other evidence

which may be adduced, and which the Board *must* take into consideration. The Board's task is to weigh *everything* before it, including those inferences which, with its specialized experience, it believes can fairly be drawn." 347 U.S. at 56-57. (Emphasis supplied.)

The "reasonable inference" standard endorsed by the Court in *Radio Officers*, and supplemented by the view of the three concurring Justices that an inference is subject to rebuttal by other evidence, thus clearly stands athwart the headlong course of the Board's per se doctrine of mass coercion.

Per se doctrines of National Labor Relations Act violations are nothing novel. And neither is repudiation of them by this Court. In *NLRB v. American National Insurance Co.*, 343 U.S. 395, 409, the Court struck down the Board's attempt to brand an employer's bargaining for a management functions clause as "per se an unfair labor practice," where the evidence viewed as a whole did not show that the employer refused to bargain in good faith. The Court commented that "a statutory standard such as 'good faith' can have meaning only in its application to the particular facts of a particular case." 343 U.S. at 410. This healthy skepticism about substituting per se doctrines for a considered evaluation of the facts in each case seems even more appropriate in instances involving fancied coercion of dues payments by all the employees in a bargaining unit.

II. The Board's Brown-Olds Mass Reimbursement Order Is An Inappropriate Remedy, Not Adapted To Particular Circumstances, Oppressive In Its Operation, And Not Calculated To Effectuate The Policies Of The Act.

A. OPPRESSIVE AND CAPRICIOUS OPERATION OF THE REMEDY

The Labor Board abuses its discretionary power in framing remedial orders unless they are "appropriate" and

"adapted to the situation calling for redress." *NLRB v. District 50, United Mine Workers*, 355 U.S. 453, 458, 463; *NLRB v. Mackay Radio and Telegraph Co.*, 304 U.S. 333, 348. Accordingly, even assuming that the Board's underlying inferences supporting the *Brown-Olds* remedy were reasonable, it would still be necessary for the Board to justify the appropriateness of the remedy itself as a means of exercising its discretionary power under the National Labor Relations Act. Board orders cannot be applied "mechanically"; they must take "fair account . . . of every socially desirable factor in the final judgment." *Phelps-Dodge Corp. v. NLRB*, 313 U.S. 177, 198. "With these fundamental principles set forth we will not burden the Court with a repetition of the legal arguments fully explored by the petitioners in their brief. We will confine our attention principally to data showing the oppressive and capricious operation of the *Brown-Olds* remedy.

To the best of our knowledge, as of August 1, 1959 a *Brown-Olds* type of remedy had been applied in about thirty final orders issued by the National Labor Relations Board.¹² The files of the AFL-CIO contain relatively detailed information regarding the estimated financial effect on eleven of the unions which have been subjected to this remedy. This supplies a sample of about one-third of the total. The following is a tabulation of the estimated amounts involved in these eleven instances:

¹² This does not include any of the numerous Intermediate Reports in which Trial-Examiners have recommended the imposition of the *Brown-Olds* remedy. Furthermore, although the *Brown-Olds* case itself was decided in 1956, the remedy did not become one to be applied generally until November 1, 1958. This was the final deadline allowed unions and contractors by the Board's General Counsel to achieve conformity in their hiring arrangements with the standards enunciated by the Board in *Mountain Pacific Chapter, Associated General Contractors*, 119 NLRB 883 (1958). See letter of the NLRB's General Counsel, dated August 19, 1958 (5 CCH Lab. Law Rep. ¶50,103).

Brown-Olds Awards

Estimated Amount of Award ¹³	Size of Union Treasury Affected
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Unions with approximately 500 members or less

\$75,000	\$80,000
\$ 750	\$34,000
\$50,000	\$ 3,000

Unions with approximately 500-1000 members

\$ 1,550	\$100,000
\$30,000-\$50,000	\$ 50,000

Unions with approximately 1000-1500 members

\$282,000	\$155,000
\$5	"Very small"
\$300,000-\$400,000	\$113,000 (cash)
	\$425,000 (total assets)

Unions with approximately 1500 members or more

\$15,000	\$60,000
\$ 7,000	\$98,000 (cash)
	\$245,000 (total assets)
\$ 6,000	\$96,000

¹³ In all of these cases there are either Motions for Reconsideration pending before the National Labor Relations Board or Petitions for Enforcement or Review pending in the courts. Consequently, the amounts of money which would be involved if the mass reimbursement orders should be enforced can only be estimated. The estimates are the best calculations possible on the part of union attorneys and officials on the basis of the formulas supplied by the Board or by its regional offices in compliance conferences.

The Board introduced the possibility of a vast multiplication of these sums in the future with its announcement of the following formula in *Nassau & Suffolk Contractors' Assn.*, 123 NLRB No. 167, 44 LRRM 1138, 1139 (1959): "In cases involving multi-employer contracts in which the contracting union and one or more employers are named respondent parties to the contract, the Union's liability for reimbursement of sums unlawfully exacted also shall extend to all employees covered under such contract. •••"

The following is a tabulation of the relationship between the estimated amounts of these awards and the union treasuries affected:

Awards substantially greater than treasury	2
Awards approximately equal to treasury	3
Awards substantially smaller than treasury	5
Award of insignificant amount	1
	<hr/>
	11

Of the eight unions affected which have less than 1500 members, five of them are threatened with awards which would wipe out their treasuries and which in two cases would place them many thousands of dollars in debt. Two of the three unions having memberships of 500 or less are so affected. The three large unions with memberships of 1500 or more are severely inconvenienced but in no instance is their treasury wiped out. The impact of the *Brown-Olds* remedy, as might be anticipated, falls most heavily upon the smaller unions least able to sustain it.

In section 1, paragraph 3 of the National Labor Relations Act the Congress set forth as one of the findings upon which it grounded the policies and provisions of the Act:

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by . . . restoring equality of bargaining power between employers and employees."

Nothing could more effectively destroy the balance of bargaining power between employers and employees, expressly stated by Congress to be a fundamental purpose of the National Labor Relations Act, than the continued application of this pernicious Board doctrine which could easily strip of financial resources or drive deeply into debt

nearly half the unions it affects. Seemingly forgotten has been the warning of this Court that the Board may not apply "a remedy it has worked out on the basis of its experience, without regard to circumstances which may make its application to a particular situation oppressive and therefore not calculated to effectuate a policy of the Act." *NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344, 349.

The very range in the size of awards (from \$5 to \$300,000 or \$400,000) in these cases suggests one of the capricious aspects of the mechanical application of this massive refund remedy. Numerous factors having no intrinsic relationship to the supposed evil of the union-security provision or hiring practice sought to be eradicated will be decisive on the amount of the resulting *Brown-Olds* award. The same union-security provision or hiring arrangement will ordinarily be used by a union on a number of jobs in a particular locality. Yet the amount to be reimbursed in a given case will be determined by the duration of the particular job concerning which a complaint is issued, by the number of men working on that job, and by the length of time required to process the case through the Board and the courts.

Characteristic of the mechanical operation of the *Brown-Olds* remedy is the Board's failure to take any account of the legality of union-shop provisions under the proviso to section 8(a)(3) of the National Labor Relations Act. Under this proviso, in all states not having "right-to-work" laws, a legitimate collective bargaining representative can enter into an agreement with an employer requiring union membership as a condition of employment after the thirtieth day following the beginning of employment. Accordingly, even assuming arguendo that an employee is coerced into joining a union by a closed-shop provision or discriminatory hiring practice, the union "[a]t most . . . may have collected only 1 month's dues in excess of those to

which it was equitably entitled"¹⁴ under a valid union-security provision. So far as the men on the job are concerned—and these are the only ones covered by the refund order—this is realistically the sole injurious effect of a closed-shop arrangement. The Board utterly refuses to face up to this fact. It imposes the *Brown-Olds* remedy so as to require the reimbursement of all dues collected from the beginning of employment (insofar as the six-month limitations period allows) until the end of the job.

A further capricious effect of this doctrine has been described by a Board Trial Examiner even while utilizing it:

"*Brown-Olds* is a meat-axe remedy applied in meat-axe fashion. . . . inequities are inherent in applying *Brown-Olds*. One of these is that it is left to the charging party to determine whether all or only one or more of equally guilty contracting parties will be held liable for reimbursement."¹⁵

The nature of this particular problem is strikingly illuminated by a trio of charges involving the International Typographical Union. In *News Syndicate Co., Inc.*, 122 NLRB No. 92 (1959), discrimination was alleged by two employees, one at the New York Daily News and the other at the Wall Street Journal. The first employee charged both

¹⁴ Board Member Peterson, dissenting in *Brown-Olds Plumbing & Heating Corp.*, 115 NLRB 594, 607 (1956). If no union shop or no union at all is what the employees want, a deauthorization or decertification petition is always available. See note 7 and related text, *supra*, p. 6.

¹⁵ *Ingalls Steel Construction Co.*, NLRB Case No. 15-CA-1174 (1959) (Intermediate Report, mimeo. copy, p. 10).

The AFL-CIO believes neither employers nor unions should be subjected to these unrealistic and oppressive refund orders. However, the Board has taken the pains to suggest in its brief in *NLRB v. News Syndicate Co.*, No. 25,496 (2d Cir.), that an employer on whom the remedy is imposed could have a claim over against the union. (Brief for the NLRB, p. 35, n. 27.)

the employer and the union while the second employee charged only the union. In *Honolulu Star-Bulletin, Ltd.*, 123 NLRB No. 51 (1959), the employees alleging discrimination chose to charge only the employer and not the union. In each instance, of course, the Board imposed the *Brown-Olds* remedy only against the party which was charged. With financial disaster for a union or even a marginal employer thus hinging on the caprice of the individual charging party, there is all the more reason to question whether a remedy of this nature can be said in any genuine sense to effectuate the policies of the Act.

B. PUNITIVE USE OF THE REMEDY

As we have already indicated, the Board's *Brown-Olds* remedy is based upon an unreasonable inference unsupported by and contrary to proven fact, and rendered irrebuttable by the Board's rejection of any offer of contradictory evidence. We have also demonstrated the oppressive and capricious effect of this remedy in actual operation. Why then has the Board increasingly resorted to its use?

We do not think that the Board can or will deny that the primary purpose of the *Brown-Olds* remedy is to enforce the Board's strictures on union-security and hiring hall arrangements. Specifically, its principal role is to enforce adherence to the three guarantees which, in the now-discredited decision of *Mountain Pacific Chapter, Associated General Contractors*, 119 NLRB 883 (1958),¹⁸ the

¹⁸ On August 28, 1959 the Court of Appeals for the Ninth Circuit refused to enforce the Board's order. *NLRB v. Mountain Pacific Chapter, Associated General Contractors*, No. 15,966. The court declared it "patent that a contract which is fair on its face is not unlawful in and of itself simply because it does not contain clauses prohibitory of illegal action." 44 LRRM 2802, 2806. While upholding the Board's capacity "to say that it will give peculiar weight to certain evidence," the court refused to let the Board

Board declared would have to be explicitly included to make valid any agreements establishing exclusive referral systems.

On February 7, 1958 the General Counsel of the Board frankly advised unions and contractors in a letter:

"The purpose of the Board in applying the so-called *Brown-Olds* reimbursement remedy is to effectuate the policies of the Act by, among other things, prevailing upon employers and unions to correct their illegal hiring arrangements." (5 CCH Lab. Law Rep. ¶ 50,060.)

In an address at the Southeast Trade Exposition on March 21, 1959, the General Counsel expressly linked the *Mountain Pacific* doctrine to the *Brown-Olds* remedy, commenting:

"The subsequent history of the *Mountain Pacific* decision has been, in large part, a concerted program by this Agency to encourage appropriate affirmative action by the contracting parties to conform their collective agreements and hiring practices to the requirements of *Mountain Pacific*. In this respect, the major

hold as a matter of law that a hiring hall contract "which omitted certain prohibitory stipulations was per se invalid and contrary to law." *Id.* at 2807. The Court of Appeals in effect struck down the Board's attempt in *Mountain Pacific* to operate on the same basis on which it is trying to operate in the *Brown-Olds* situations, viz., on the basis of per se doctrines rather than reasonable inferences of fact. *Id.* at 2805-2807. This Court itself has noted that "the Board has no general commission to police collective bargaining agreements" *Local 1976, Brotherhood of Carpenters v. NLRB*, 357 U.S. 93, 108.

The Board has indicated that it will apply the *Brown-Olds* reimbursement remedy if a contract fails to meet the *Mountain Pacific* standards even though the contract is otherwise valid on its face and even though there has been no showing that the contract has been discriminatorily enforced against any particular employees. *Los Angeles-Seattle Motor Express, Inc.*, 121 NLRB No. 205 (1958); *News Syndicate Co.*, 122 NLRB No. 92 (1959). Formerly, refund orders were entered by the Board only where specific individuals had been found to be coerced into paying fees and dues. See, e.g.,

spur has been the so-called *Brown-Olds* remedy. . . .
deterrence is the underlying consideration
 (Mimeo copy, pp. 5, 8; emphasis supplied.)

At the Rutgers University Conference on September 30, 1958 the General Counsel picturesquely emphasized the punitive nature of the *Brown-Olds* remedy and the coercive use made of it by the Board:

" . . . this extraordinary remedy . . . demonstrates vividly the capabilities of administrative pressure and persuasion. . . . over the heads of the parties hung this statutory sword of Damocles—the constant awareness that *Brown-Olds* would be applied in full. . . . President 'Teddy' Roosevelt . . . carried a 'big stick' and with it he went far. We spoke softly and carried a 'big sword,' and the results to date have been heartening." (Mimeo. copy, pp. 6, 8.)

Sharply contrasting with the decisions of the Board and the words of its General Counsel is the unqualified statement of this Court that the Board's "power to command affirmative action is remedial, not punitive." *Consolidated*

Local 404, International Brotherhood of Teamsters, 100 NLRB 801 (1952), enforced 205 F.2d 99 (1st Cir. 1953). In *Nassau and Suffolk Contractors' Assn.*, 123 NLRB No. 167, 44 LRRM 1138, 1139 (1959), the Board expressly overruled two of its prior decisions in holding that the reimbursement remedy "is applicable to all closed shop and exclusive hiring hall agreements, which do not provide the safeguards set forth in the *Mountain Pacific* decision, 119 NLRB 883, whether or not proof of actual exaction of payments is established."

Of the system, in itself, by which a union serves as the instrumentality for referring workers to prospective employers for jobs, the Court of Appeals for the Ninth Circuit in its *Mountain Pacific* decision said simply: "The hiring hall is legal and has always been held so." 44 LRRM at 2805, citing *NLRB v. Swinerton*, 202 F.2d 511 (9th Cir. 1953), cert. den., 346 U.S. 814; *Eichleay Corp. v. NLRB*, 206 F.2d 799 (3d Cir. 1953); *Del E. Webb Construction Co. v. NLRB*, 196 F.2d 841 (8th Cir. 1952); *Hunkin-Conkey Construction Co.*, 95 NLRB 433 (1951).

Edison Co. v. NLRB, 305 U.S. 197, 236; *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 12. In *Republic Steel*, as if anticipating the arguments advanced on behalf of the Board's policy of "deterrence" during the past two years, the Court supplied a blunt refutation:

"* * * it is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. That argument proves too much, for if such a deterrent effect is sufficient to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end." 311 U.S. at 12.

In a word, the *Brown-Olds* remedy, both in its underlying assumptions and in its actual application, is opposed to reason, to history, to empirical data, to Congressional policy, and to the pronouncements of this Court.

CONCLUSION

For the foregoing reasons and for the reasons stated in the brief for petitioners, the judgment of the Court of Appeals should be reversed with directions to set aside the order of the National Labor Relations Board.

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September 1959

No. 44

Office Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

LOCAL LODGE NO. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, AND BRYAN MANUFACTURING COMPANY, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

On Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia Circuit

BRIEF FOR PETITIONERS

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 44

LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, INTERNATIONAL ASSOCIA-
TION OF MACHINISTS, AFL-CIO, AND BRYAN MAN-
UFACTURING COMPANY, *Petitioners*.

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

On Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia Circuit

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals, Judge Fahy dissenting, is reported at 264 F.2d 575 (R. 466-477). The decision and order of the Board, Chairman Leedom and Member Murdock dissenting, are reported at 119 NLRB 502 (R. 428-461, 325-427).

JURISDICTION

The judgment of the Court of Appeals was entered on February 27, 1959 (R. 478). The petition for a

writ of certiorari was granted on June 22, 1959 (R. 479). 360 U.S. 916. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the six-month period of limitations of Section 10(b) of the National Labor Relations Act bars the issuance of a complaint to invalidate a collective bargaining agreement and a successor collective bargaining agreement, both lawful on their face and containing a conventional union shop provision, where the sole foundation for the complaint is an alleged unfair labor practice which occurred at the time of the execution of the original agreement more than six months before the filing and service of the charge.

2. Whether, based exclusively on a finding that the original union shop agreement was executed at a time when the contracting union did not have a majority, the National Labor Relations Board may require the employer and the union to reimburse the employees for the union dues and initiation fees remitted by the employer to the union pursuant to the individual check-off authorization of each employee; the period of the refund to run for the term of the original and all succeeding union shop agreements beginning six months preceding the filing of the charge.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et. seq.*), are set forth in Appendix B, *infra*, pp. 105-110.

STATEMENT

I. The Subsidiary Findings of Fact

Among the plants operated by the Bryan Manufacturing Company in 1954 was one at Reading, Michigan, (R. 337). Under date of July 17, 1954, a representative of the International Association of Machinists, E. L. Schwartzmiller, wrote to the plant manager of the Company's Reading plant that (R. 356-357):

Please be advised that the International Association of Machinists represent a majority of the "production and maintenance" employees of your company.

This is to request a meeting at your earliest convenience to discuss the terms of a collective bargaining agreement. I will be available for such meeting anytime the week of July 26, 1954. Please advise me of the time, date and place you wish to meet.

Upon receiving this letter, Leslie J. Westbrook, then plant manager of the Reading plant, consulted his attorney, Walter E. Probst (R. 357). In a telephone conversation, Probst stated that he "would advise recognizing them because he had been doing business with them in other plants"; he said that he had found in his dealings with the IAM that whenever a company had "contested," the IAM had "won out"; he observed that he had found the IAM "fair to work with," that they "could get along," and that they "might as well go ahead and have the meeting with them"; and he concluded that if they did not "go ahead and arrange for a meeting," they would "get beaten in the end" (R. 357-358):

About a week after this telephone conversation, Probst, Westbrook, and R. W. Adams, vice-president

of the Company, met (R. 358). They decided to recognize the IAM (*ibid.*). Tentative contract provisions were discussed among themselves (*ibid.*). A meeting with IAM representative Schwartzmiller was arranged for August 10 (*ibid.*).

On August 10, Westbrook, accompanied by Probst and Gallucci (another Company attorney), met with Schwartzmiller (R. 358). The meeting was devoted to negotiating an agreement (*ibid.*). By the end of the meeting, except for wages and seniority, accord had been reached on the basic terms of a two-year collective bargaining agreement covering the Company's employees at the Reading plant (*ibid.*). As expressed by Westbrook, "We had our proposal, Mr. Schwartzmiller had his. We argued back and forth, cutting out, putting in, until we arrived at an original contract . . . to be presented to the employees" (R. 358-359).

The Company in the agreement extended exclusive recognition to the IAM as the bargaining representative of the employees at the Reading plant (R. 350, 283-284):

The Company recognizes the Union as the sole and exclusive bargaining agency for all employees within the bargaining unit consisting of the following: all present and future employees of the company, excepting foremen, working foremen, office or clerical employees, professional employees, guards and all supervisors as defined in the Act.

Among the terms of the agreement was a conventional union shop provision (R. 351):

As a condition of employment, all employees covered by this agreement shall, forty-five (45)

days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union during the term of this agreement.

The agreement also provided for the check-off of union dues and initiation fees upon the individual authorization of each employee (R. 284):

Upon receipt of a signed authorization of the employee involved, the Company shall deduct from the employee's pay check the initiation fee and dues payable by him to the Union during the period provided for in said authorization.

The agreement covered the conventional subjects of a collective bargain including provisions pertaining to management functions, hours and overtime, paid holidays, reporting and call-in time, and a grievance and arbitration procedure (R. 350 and n. 14, 283-297). The agreement provided for a two-year term from August 10, 1954 to August 10, 1956, with a provision for automatic renewal from year to year in the absence of timely notice to terminate, amend, or modify (R. 352). This basic agreement was signed for the Company by vice-president Adams about August 12 or 13 (R. 352), and for the IAM by Schwartzmiller not later than August 17 (R. 389).

By August 17 an agreement on wages was also reached, signed, and incorporated into the basic agreement (R. 352-353, 299-301). The wage rates were made effective as of August 10, and involved a five cents per hour wage increase for all employees, with a further five cents per hour increase in December 1954 (*ibid.*).

The wage rates were to remain in effect until August 10, 1955, when "hourly wage rates only" could be reopened upon sixty-days prior written notice (*ibid.*). Finally, on September 2, 1954, accord was reached upon principles and procedures pertaining to seniority and these were incorporated into the basic agreement (R. 353-354, 297-299).

About a year later, on August 30, 1955, a second agreement, for a three-year term from August 10, 1955 to August 10, 1958, was entered into between the Company and Local Lodge No. 1424 (R. 392, 302-323), the Local Lodge having been founded prior to January 1955 (R. 369, n. 45). The unit of employees covered by this agreement included, in addition to the production and maintenance employees at the Reading plant, the production and maintenance employees at a second plant at Hillsdale, Michigan, some twelve miles away (R. 338, 343, 393-394). The acquisition of the second plant at Hillsdale was necessitated by the Company's outgrowth of available facilities at the Reading plant (R. 393-394). Thus, at the time the second agreement was reached on August 30, 1955, the Reading plant, which it had originally been planned would operate with about 150 to 200 employees, had expanded to 350 employees (*ibid.*). It was planned that the Hillsdale plant, which went into operation two months after the second agreement was signed, would be manned, as it was, by the transfer of employees from the Reading plant (*ibid.*). As the Board found, "the unit included in neither [the 1954 or 1955] agreement is challenged. In short, there is no contention that the expansion of the unit in the 1954 agreement to include the same employee classifications at the recently opened Hillsdale plant, along with those

same classifications at the Reading plant, makes the thus expanded unit in the 1955 agreement in any way inappropriate". (R. 344).

The 1955 agreement drastically revised the provisions pertaining to seniority, particularly providing for the retention of seniority in both the Reading and the Hillsdale plants by all employees on the payroll as of August 30, 1955 (R. 393). Settling the question of the seniority of the Reading employees to be transferred to the Hillsdale plant, in advance of operations at the latter plant, was obviously advantageous to all (R. 394). In addition, the wage and job classification structure was fundamentally altered. In contrast with the seven job classifications set out in the 1954 wage supplement, the wage supplement of the 1955 agreement contains eleven classifications, each with three sets of wage rates to be effective on August 10 of 1955, 1956, and 1957, respectively (R. 393). Thus, a tool and die operator, who before August 10, 1955, was rated at \$2.05 per hour, received a fifteen cents increase as of August 10, 1955, a further eight cents increase as of August 10, 1956, and an additional eight cents increase as of August 10, 1957 (Compare R. 300 with 323). Numerous additional changes were made of the type which a year's experience might well have indicated were desirable (R. 392-393). The union shop and check-off provisions of the two agreements remained the same (R. 392).

On August 10, 1954, the effective date of the first agreement, there were 148 employees within the unit (R. 382, 365, n. 36). On August 30, 1955, the date the second agreement was made, there were about 350 employees in the unit (R. 394). On November 21, 1955, almost three months later, there were about 480

employees within the unit (R. 394, n. 69). Of the 480 employees in the unit on November 21, 1955, except for 30 to 40 "probationary" employees (those employed 60 days or less), all had authorized the Company to check-off their dues (R. 394, n. 69). Similarly, the 350 employees in the unit on August 30, 1955, had authorized dues check-offs (R. 394). No employee who had been with the Company 45 days or more had ever refused to have his dues checked off (R. 394, n. 69).

The unfair labor practice charges in this case were filed and served more than six months after the Company had recognized and contracted with the IAM on August 10, 1954. On June 9, 1955, Maryalice Mead, an individual, filed a charge against the Company (R. 263-264), served the next day (R. 327, n. 2), and on August 5, 1955, she filed a supplemental charge against the Company (R. 265-266), served on August 8, 1955 (R. 327, n. 2). The June 9 charge was filed and served ten months after the Company had recognized and contracted with the IAM on August 10, 1954. The same individual filed a charge against the IAM and Local Lodge No. 1424 on August 5, 1955 (R. 260-262), which was served on August 8, 1955 (R. 327, n. 2). The August 5 charge was filed and served almost twelve months after the Company had recognized and contracted with the IAM on August 10, 1954.

The charge against the unions, as the supplemental charge against the Company, alleged *inter alia* that "at the time of the execution of this collective bargaining agreement" on August 10, 1954, the unions "were not unassisted and/or majority representatives of the employees in the unit . . ." (R. 261, 266). Based

on these charges, separate complaints were issued against the Company and the unions (R. 267-277). As amended, the complaints alleged *inter alia* that at the time of the entry into the first agreement on August 10, 1954, and into the second agreement on August 30, 1955, the "Union did not in fact represent a majority of the employees within the bargaining unit . . ." (R. 268-269, 274, 282-283).

II. The Ultimate Findings As To The Merits Of The Unfair Labor Practices Alleged

On the merits, the Board found that the critical question pertains "to the IAM's lack of majority with respect to the 1954 agreement" (R. 381). It observed that "the crucial date with respect to majority is August 10, 1954, because on that date the Respondent Company, having recognized the IAM and bargained with it, agreed to the provisions of the basic contract which gave the IAM its union-security and check-off benefits" (R. 382). It concluded that, of the 148 employees in the unit, "the IAM had not been designated by a majority of the employees in the appropriate unit at the Reading plant at any time prior to August 16, 1954" (R. 389).

The Board observed that "the ultimate findings as to the 1955 agreement hinge upon findings as to majority and assistance with respect to the 1954 agreement" (R. 387, n. 63). For, in its view, "such adherence as the IAM secured, on and after that date [August 16, 1954], cannot contribute to establishing a valid and unassisted majority" (R. 389). Based on the finding that the Company had assisted the IAM by recognizing and contracting with it on August 10, 1954, when it did not have a majority (R. 389-390,

413 and n. 98), the Board concluded "that the 1955 agreement is subject to the same taint and infirmity as the 1954 agreement" (R. 395).

Accordingly, based on its foundation "finding that at the time the . . . [Company and the IAM] executed the August 1954 agreement the . . . Unions did not represent a majority of the employees covered by the agreement," the Board stated (R. 437):

It follows therefore, and we find, . . . that . . . the Company violated Section 8(a)(1), (2), and (3) and the . . . Unions 8(b)(1)(A) and (2) by maintaining in effect the 1954 agreement and by executing and maintaining in effect the 1955 agreement, both of which contained unlawful union security clauses.

The union security clauses were found to be unlawful, not because "illegal *per se*" (R. 351), but solely because of the IAM's lack of majority when the 1954 agreement was executed (R. 412-413).

The Board dismissed the allegations of the complaint against the Company that it had "sponsored and dominated the . . . Unions" (R. 413-414).

III. The Disposition Of The Question Whether The Six-Month Period Of Limitations Contained In Section 10(b) Of The Act Barred The Issuance Of The Complaints

Since the critical event—the Company's act of recognizing and contracting with the IAM on August 10, 1954, at a time when the IAM did not have a majority—occurred more than six months before the filing and service of the unfair labor practice charges, the question whether issuance of the complaints was barred by the limitations provision of Section 10(b) of the Act, was sharply raised. Section 10(b) provides that:

... no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . .

A divided Board concluded, by a three to two vote, that issuance of the complaints was not barred by the running of the six-month period of limitations.

In the majority's view, Section 10(b) merely precluded the Board from finding the execution of the 1954 agreement to be an unfair labor practice; it did not bar the Board from finding the maintenance in effect of the 1954 agreement for the period beginning six months preceding the filing of the charge, and the execution and maintenance in effect of the 1955 agreement, to be an unfair labor practice (R. 430-435).

The majority supported its conclusion in reliance upon two concepts: (1) "Section 10(b) is a statute of limitations and not . . . a rule of evidence" (R. 432-433); Section 10(b), therefore, "does not bar the receipt of evidence, antedating the critical period, which may be relevant in determining whether conduct within the 6 months period was unlawful" (R. 433); accordingly, "The legality of the Respondents' conduct in maintaining the 1954 and 1955 union security contracts, and in signing the 1955 agreement, must be considered in the light of the evidence surrounding the execution of the 1954 agreement" (R. 435); so considered, it establishes that it was an unfair labor practice to maintain the 1954 and the 1955 agreements, and to execute the 1955 agreement, because the Company recognized and contracted with the IAM on August 10, 1954 when it did not have a ma-

jority (R. 436-437). (2) Section 10(b) does not bar issuance of a complaint based on maintenance in effect of an agreement *invalid on its face* but executed more than six months before the filing of the charge; there is "no difference in illegality between a contract unlawful on its face, that is, one prescribing a form of union security prohibited by the Statute, and a contract invalid because certain requisites to the making of a valid contract have not been complied with. In both instances the invalidity begins at a point in time and continues so long as the unlawful contract remains in effect"; accordingly, it does not matter that the illegality of an agreement *valid on its face* can be established solely in reliance on an unfair labor practice attending its execution which antedated the charge by more than six months (R. 434-435).¹

Chairman Leedom and Member Murdock dissented (R. 449-457). The dissenters were of the view—and the majority agreed as to this—that maintenance in effect of the 1954 agreement, and execution and maintenance in effect of the 1955 agreement, could be found to be unfair labor practices only upon the basis of the IAM's recognition on August 10, 1954; that the six-month period of limitation had clearly run as to that alleged unfair labor practice; and that, since the events within the six-month period could be found to be unfair labor practices only on the basis of the barred event, Section 10(b) had eliminated the sole

¹ A concurring opinion, in addition to joining the rationale expressed in the majority opinion, stated a separate basis upon which to support the majority result (R. 443-449). The concurring member noted that his alternative "thinking . . . is . . . fundamentally at variance with that of all my colleagues . . ." (R. 444). Since it did not command the assent of any other member, it will not be considered in this brief.

foundation upon which any determination of an unfair labor practice could be predicated (*ibid.*).

As to the majority's observation that Section 10(b) does not bar receipt in evidence of events antedating the six-month period, the dissenters pointed out that "evidence as to such events is admissible for background purposes" only, and that it "is well established that in making unfair labor practice findings the Board cannot rely solely on events which occurred more than 6 months before the filing of the charges . . ." (R. 452). As to the majority's assimilation of an agreement invalid on its face with one valid on its face, the dissenters pointed out that the considerations relevant to each are different (R. 451-452):

. . . in the second type of situation involved herein, where the reason for the invalidity assertedly lies in a failure in executing the agreement to comply with some or all of the requisites for making a valid union-security agreement, the circumstances which cause the agreement to be invalid existed only at the point in time in the past when the agreement was executed and are not thereafter repeated. For this reason, therefore, the continuing invalidity of the agreement is directly related to and is based solely on its initial invalidity, and has no continuing independent basis. Accordingly, although an agreement invalid in its inception may continue to be invalid throughout its life, the fact of its invalidity and the consequent existence of unfair labor practices cannot be established merely by proof that the agreement was being maintained at some point in time subsequent to its execution, but can only be established by proof of the facts surrounding its execution in the past, which created the initial invalidity. When as here, therefore, the charges are filed more than 6 months after the execution of the

agreement, proof of its invalidity and the consequent unfair labor practices can only be established by reliance on evidence of events which occurred more than 6 months before the filing of the charge. This Congress expressly precluded by Section 10(b).

A divided Court of Appeals, Judge Fahy dissenting, affirmed the view of the Board majority, stating that mindful of its "limited scope of review" it was "constrained to uphold the Board's conclusion" (R. 469) as "rational" (R. 470) and "not unreasonable" (R. 473). Judge Fahy in dissent stated in part that (R. 477):

One of the principal purposes of a statute of limitations is to bring repose. As stated in *NLRB v. Pennington, Inc.*, 194 F.2d 521, 524 (3d Cir. 1952), the rationale underlying such a statute is to prevent "people . . . being brought to book upon stale charges." Consistently with this, the period of limitations in the Taft-Hartley Act must have been deliberately adopted by Congress to aid in stabilizing labor relations by precluding adversary proceedings based on events which had laid dormant for six months. Under the decision of the court, however, there is no limit whatsoever to the time that might pass, with countless changes in the details of relations and obligations, without a complaint being barred, although proof of the true basis of illegality of the conduct complained of lies in the years that are gone. This seems to me inconsistent with the Congressional policy expressed in § 10(b).

IV. The Board's Order

The Board's order, enforced by the Court of Appeals (R. 479), *inter alia* requires the Company to cease giving effect to its agreement with the unions, severs

the bargaining relationship between them, and bars a resumption of recognition unless and until the unions have been certified by the Board (R. 437-441). In addition, the order requires that the Company, and the unions "shall jointly and severally reimburse the employees and the former employees of the Respondent Company whose initiation fees and/or dues in the Respondent Unions have been checked off pursuant to any agreement between the Respondents for the amounts deducted from the employees' earnings, beginning with the applicable 6-month period" (R. 442).

SUMMARY OF ARGUMENT

I.

1. The plain meaning of the six-month period of limitations bars issuance of the complaint. The whole foundation of the complaint rests upon the unfair labor practice of recognizing and contracting with the IAM on August 10, 1954, when it did not have a majority. The complaint is "based upon" that unfair labor practice. It is an unfair labor practice "occurring more than six months" before the filing and service of the charge. And Section 10(b) could not state more plainly than it does that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing [and service] of the charge. . . ."

2. The purpose of Section 10(b) confirms its plain meaning. Concerned that "people were being brought to book upon stale charges," Congress enacted the "rather brief limitation period . . . to shorten up the time in which respondents could be called to answer charges of unfair labor practice." *National Labor Relations Board v. Pennwoven, Inc.*, 194 F.2d 521.

524 (C.A. 3). In this case, although the critical unfair labor practice was the inception of the relationship between the IAM and the Company on August 10, 1954, no charge was filed until ten months later. Having waited four months too long, the action was forever barred.

If, as here, despite the total dependence of the complaint on the alleged unfair labor practice which occurred on August 10, 1954, the Board may nevertheless proceed on the basis of a charge filed ten months later, why not twenty months, thirty months, or forty months later? And if, as here, the Board can undo the bargaining relationship after the second agreement, simply because of a defect in the original inception of the relationship, why not after the third, fourth, or fifth agreement? To prevent this Congress drew the line at six months. Either that line is to be respected or there is no line.

To disregard the line defeats the purpose of Congress to obviate the evil of delayed litigation "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused." H. Rep. No. 245, 80th Cong., 1st Sess., 40, in 1 Leg. Hist. 331. To disregard the line is also at war with the principle of repose—the stability it is designed to foster if a charge is not timely filed and served within the allowable six month period. If the period of limitations has not run in this case, it never can. A bargaining relationship, defective only because of a misstep in its origin, would be perpetually vulnerable. No limitation would be applicable to it. There "never could be an end to the controversy because in the Board's view the wrong was a continuing tort." L. Hand, J., concurring in

National Labor Relations Board v. Childs Co., 195 F.2d 617, 621 (C.A. 2). "To adopt the Board's theory of the continuing violation is not in accordance with what we believe the intent of the Congress was in establishing the six-months limitation period." *National Labor Relations Board v. Pennwoven, Inc.*, 194 F.2d 521, 526 (C.A. 3). The "case will never be closed until it is finally litigated" (*id.* at 525); yet to fail to quiet the controversy "would not conduce to that industrial peace which it is the overall purpose of the Act to secure." L. Hand, J., *supra*, at 621-622.

3. When Congress enacted the limitations provision of Section 10(b), the question of applying limitations to union security agreements allegedly unlawful at inception was not *res nova*. On the contrary, beginning July 12, 1943, through the medium of appropriations riders restricting the Board's use of its funds, Congress had safeguarded such agreements from invalidation because of alleged illegality at inception by providing that the Board was not to use its funds to prosecute a complaint "arising over an agreement . . . between management and labor" if no charge had been filed within three months of entry into the agreement and the other conditions of the riders had been met. The six-month limitation of Section 10(b) applicable to all unfair labor practices replaced the three-month limitation of the riders applicable to agreements. As the Senate Report stated, upon adoption of Section 10(b) the limitations riders upon the Board's appropriations "would no longer be necessary. . . ." S. Rep. No. 105, 80th Cong., 1st Sess., 26, in 1 Leg. Hist. 432. To say, therefore, that Section 10(b) does not protect union security agreements allegedly invalid at inception not only renders untrue the statement that the

"riders would no longer be necessary." It also requires the conclusion that, when Congress for the first time in 1947 enacted a statute of limitations having general applicability to all unfair labor practices, it was at the same time and by that very act eliminating the already existing applicability of limitations to union security agreements. This is not possible.

4. To support its conclusion that Section 10(b) does not operate as a bar, the Board sloganizes on two concepts: (a) Section 10(b) is a statute of limitations, not a rule of evidence; (b) continuing violation.

(a) The Board reasons that, as Section 10(b) is a statute of limitations and not a rule of evidence, evidence of events antedating the six-month period is admissible; in this case, consideration of that antedating evidence establishes that the Company originally recognized and contracted with the IAM when it did not have a majority; by reason of this initial invalidity the maintenance of the original agreement and execution and maintenance of the successor agreement within the six-month period may be found to be an unfair labor practice.

To reason in this fashion is to end with the conclusion that Section 10(b) is not only not a rule of evidence, it is not a statute of limitations either. Receipt of evidence antedating the six-month period is therefore subject to the important qualification that such evidence is "admissible only as background for interpretation or clarification" (*Greenville Cotton Oil Co.*, 92 NLRB 1033, 1034, n. 6, affirmed, 197 F.2d 451 (C.A. 5)); it may not be given "independent and controlling weight" (*Universal Oil Products Co.*, 108 NLRB 68, 69-70). The Board disregarded the quali-

fication in this case. The controlling event here is the Company's act of recognizing and contracting with the IAM on August 10, 1954 when the IAM did not have a majority. It is this barred unfair labor practice, which occurred ten months before the first charge was filed, that is the exclusive foundation for the conclusion that offenses occurred within the allowable period. But for this barred act there is *no* evidence of a violation within the six-month period. The unfair labor practice antedating the period is thus used, not as a background evidence, but as the sole evidence upon which to predicate the violation found. The barred event was given more than "independent and controlling weight," it was given exclusive significance. This distortion nullifies the prescriptive purpose of Section 10(b).

(b) The Board reasons that, as Section 10(b) does not bar issuance of a complaint based on continuance in effect of an agreement *invalid on its face* but executed more than six months before the filing of the charge, the same must be true of an agreement valid on its face but illegal because executed when the contracting union did not have a majority. The distinction between the two is obvious and decisive.

With an agreement invalid on its face, no evidence but the agreement is needed to establish the violation of maintaining an unlawful arrangement in effect. No proof of events antedating the allowable six-month period is requisite; no question arises of reliance upon a barred unfair labor practice to establish the violation. In this context the concept of continuing violation is relevant only in refutation of the defense that because the arrangement was inaugurated more than six months before the charge was filed its current main-

tenance in effect is immune. To that argument the simple and direct answer is that the illegality, patent on the face of the agreement and requiring no proof of antecedent events, did not cease with its inception but continued to date.

Not so with an agreement valid on its face. It is not possible to say of such an agreement that on its face its maintenance in effect is a continuing violation. Only proof of illegality in its inception would furnish the predicate for a statement that it is illegal in its continuance. And it is precisely this showing that Section 10(b) operates to preclude when establishment of illegality in inception depends upon proof of an unfair labor practice antedating the filing of the charge by more than six months. That is this case.

II

The Board exceeded its discretionary power insofar as its order requires petitioners to reimburse the employees for the union dues and initiation fees remitted by the Company to petitioners pursuant to the individual checkoff authorizations of each employee.

1. The basic premise of this part of the Board's order is that dues and fees were involuntarily paid under the sanction of the union security agreement, and that since the involuntarism was rooted in an invalid agreement reimbursement is justified. The premise is fundamentally false.

When the 1947 amendments to the Act were adopted, the proviso to Section 8(a)(3) was amended to provide that a union security agreement could only be valid "if, following the most recent election held as provided in section 9(e) the Board shall have certified

that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement. . . .” This requirement was repealed on October 21, 1951 (Public Law 189, 82d Cong., 1st Sess.), it having proved “burdensome and unnecessary.” *National Labor Relations Board v. Gannett News Co.*, 197 F. 2d 719, 724 (C.A. 2), affirmed, 347 U.S. 17. The union shop authorization polls conducted by the Board overwhelmingly demonstrated that employees voluntarily favor the adoption of union security agreements. They forever put the quietus to the notion that such agreements merely constitute a device to constrain the payment of dues and fees by an unwilling majority. These agreements operate compulsively only as to that small group known as “‘free riders,’ i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union. . . .” *Radio Officers’ Union v. National Labor Relations Board*, 347 U.S. 17, 41. Such agreements are the means by which a majority of the employees can require a negligible minority to pay their own way.

There is no reason to suppose that the sentiment was different in the present case for the period to which the refund order is applicable. While the 1951 amendment repealed the requirement of a *prior* election to validate a union security agreement, it substituted in its stead the stipulation that a union security agreement may neither be executed nor enforced if “following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement” (Section

8(a)(3) proviso). Thus the employees have it within their power to divest an agreement of its union security provision. No deauthorization petition was ever filed in this case, although it could have been at any time (*Andor Co., Inc.*, 119 NLRB 925), the only requirement for the conduct of an election being that the petition be supported "by 30 per centum of the employees in a bargaining unit covered by an agreement" containing a union security clause (Sec. 9(e)(1)). Not even 30 percent of the employees could be mustered to support an election looking toward rescission of the union security provision of the agreements.

This record demonstrates the extremes of the Board's assumption. The Board premises the invalidity of the union security agreement upon the single circumstance that less than half of 148 employees designated the IAM to represent them on August 10, 1954. Yet there were 350 employees in the unit about a year later, more than doubling the initial complement; and there were 480 employees in the unit on November 21, 1955, more than tripling the initial complement (*supra*, pp. 7-8). Thus most of the employees were newly added after the original execution of the 1954 agreement. When they arrived on the scene they found nothing but the conventional manifestations of a typical bargaining relationship. There is no reason to suppose that they did not willingly embrace what was found, as is true in thousands of plants throughout the United States.

2. The emptiness of the Board's major premise is matched by its disregard of other cogent considerations. The 1954 and 1955 agreements provided substantial benefits for the employees. The negotiation of an agreement costs money, as does its administration. Dues and fees go towards defraying the cost. They do

not repose in depositories. It may safely be assumed that much of the fees and dues collected in this case have been expended to pay for services. To require the refund of dues and fees at this late date does not simply mean that the employees will have received the benefits of union representation without contributing to their cost. The moneys for reimbursement must come from somewhere, and insofar as the unions are concerned, they must come from the dues and fees paid by other employees in other plants. What reimbursement comes down to, therefore, is that the employees in this case will have the benefits they secured from union representation paid for by the employees in other plants. Moreover, not only does the Board disregard past services, but to drain a union's treasury disables it from as effectively negotiating and administering future agreements, and prejudices as well its capacity to establish and maintain intraunion benefit programs. And insofar as the Company is concerned, it simply acted as a conduit for the transmission of the funds.

3. It is the fees and dues *checked-off* pursuant to the employee's individual authorization which are to be refunded. If, as we must infer from the Board's order, it is the check-off authorization which is critical, it is plain that that authorization is the individual voluntary act of each employee. Nothing compels the check-off authorization; it serves the employee's convenience as well as the union's. Thus in requiring reimbursement of *checked-off* fees and dues, the Board's order identifies as critical the very act which indisputably flows from the employee's individual authorization.

4. The Board's refund order extends and misapplies this Court's decision in *Virginia Electric and Power Co. v. National Labor Relations Board*, 319 U.S. 533.

This Court decided that a refund order was within the Board's power and that the exercise of the power was within the Board's discretion in the particular circumstances of that case. But the ruling circumstance in *Virginia Electric*, which controlled the evaluation of every other factor, was the company-dominated character of the contracting union. The ruling factor of domination present in *Virginia Electric* is absent here. In this case the Board expressly found that the unions were *not* sponsored or dominated by the Company (R. 413-414). And there are no substituting circumstances which the Board has convincingly appraised or which exist to support the refund order here. On the contrary, it is demonstrable that the Board's current use of the refund order is deliberately designed to accomplish a punitive purpose, not a remedial objective.

The Board's discretion is not so limitless as to authorize it to mulct an employer and a union by requiring the refund of dues and fees—which the employer never kept and which the union has long since expended to pay for service—upon the basis of nothing but a hostile surmise that the dues would not have been paid but for the union security provision of the agreement.

ARGUMENT

I. THE SIX-MONTH PERIOD OF LIMITATIONS CONTAINED IN SECTION 10(b) OF THE ACT BARS ISSUANCE OF THE COMPLAINTS.

Section 7 of the Act provides that, except as affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3), "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in

other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . . ." The Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise" of such rights (Section 8(a)(1)); to "contribute . . . support" to a labor organization (Section 8(a)(2)); and "to encourage or discourage membership in any labor organization" by discrimination in employment (Section 8(a)(3)). The prohibition against encouragement of union membership by discrimination in employment is subject to the important qualification expressed in the proviso to Section 8(a)(3) authorizing union security agreements. In presently relevant part the proviso reads that:

. . . nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein . . . if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made. . . .

As to a labor organization or its agents, it is an unfair labor practice for them "to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7" (Section 8(b)(1)(A)), and "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)" (Section 8(b)(2)).

The Board found that the Company violated Section 8(a)(1), (2), and (3) of the Act, and the unions Section 8(b)(1)(A) and (2). As applicable to this case, the crux of the Section 8(a)(1) and (2) violation is

the act of an employer in recognizing and contracting with a union as the exclusive representative when it does not have majority status. *Infra*, pp. 63-65. And the crux of the Section 8(a)(3), -8(b)(1)(A), and 8(b)(2) violation is inclusion in an agreement of a union security provision conditioning employment on union membership, in the absence of the contracting union's designation as the majority representative by the employees "covered by such agreement when made" as required by the proviso to Section 8(a)(3). *Infra*, pp. 63-65.

The violations found rest exclusively upon a single central unfair labor practice finding. That finding is that on August 1, 1954, at a time when the IAM did not represent a majority of employees within the appropriate unit, the Company extended exclusive recognition to and contracted with the IAM (*supra*, p. 10). But for this unfair labor practice no violation of any kind could be found. Since this unfair labor practice occurred more than six months before the filing and service of the earliest charge, the focal question is whether a complaint founded upon it is barred by the six-month period of limitations contained in Section 10(b) of the Act.

A. To Base A Complaint Upon An Unfair Labor Practice Antedating The Six-Month Period of Limitations Is Barred By The Plain Meaning Of Section 10(b).

Section 10(b) of the Act provides in relevant part that:

... no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. ...

The whole foundation of the complaint rests upon the unfair labor practice of recognizing and contracting with the IAM on August 10, 1954, when it did not have a majority. The complaint is "based upon" that unfair labor practice. It is an unfair labor practice "occurring more than six months" before the filing and service of the charge. And Section 10(b) could not state more plainly than it does that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing [and service] of the charge. . . ."

The total dependence of the complaint upon the barred unfair labor practice is sharply shown by the fact that the events within the allowable six-month period preceding the earliest charge are barren of any suggestion of an unfair labor practice. The findings disclose the sole happenings within the period to be: (1) the existence and administration of a conventional collective bargaining agreement containing an orthodox union security provision; and (2) the negotiation, execution, and administration of a successor agreement, providing for substantial wage increases, adjusting numerous provisions of the predecessor agreement in the light of a year's experience under it, and settling the seniority problems raised by the anticipated operation of a second plant; the second agreement also containing an orthodox union security provision (*supra*, pp. 6-7).

Nothing in these typical manifestations of a labor-management collective bargaining relationship remotely resembles an unfair labor practice. "Certainly mere recognition and bargaining are not illegal in themselves." *Armco Drainage & Metal Products, Inc.*, 106 NLRB 725, 730, enforced as modified, 220 F.2d 573 (CA. 6), cert. denied, 350 U.S. 838. Furthermore,

"If any presumption is to be indulged in where a formal collective bargaining agreement has been entered into, it is the ordinary presumption of legality. Nothing in the act and no authority or rule of law is called to our attention which requires us to presume that all union or closed shop provisions are prima facie illegal. . . ." *Lerinsolin Corp. v. Joint Board*, 229 N.Y. 454, 87 N.E. 2d 510, 514.² As the Board has repeatedly held in construing collective bargaining agreements, an argument is untenable which "presumes illegality", for "the proper presumption is one of legality." *Humboldt Lumber Handlers Inc.*, 108 NLRB 393, 395; *New Orleans Laundry, Inc.*, 100 NLRB 966, 968.³

It is crystal clear, accordingly, that the events within the allowable six-month period are wholly benign; indeed, they are clothed with the strong presumption favoring the validity of an established relationship. Only by importing into these events the barred unfair labor practice of August 10, 1954—upon which limitations had already run by four months—can sinister significance be given to them. But Section 10(b) "extinguishes liability for unfair labor practices committed more than six months prior to the filing of the charge." *National Labor Relations Board v. Fant Milling Co.*, 360 U.S. 301, 309, n. 9. Nothing in Section 10(b) permits revival of that extinct liability. On the contrary Section 10(b) prohibits issuance of a complaint "based upon" it. The complaint in this case is based upon nothing but it.

²Of course, by virtue of the absolute outlawry of the closed shop by the 1947 amendments to the proviso to Section 8(a)(3) of the Act, the statement is subject to qualification if its reference to closed shop provisions is meant in a technically precise sense.

³The vigor of the policy underlying the presumption of validity of an existing agreement is strikingly illustrated in the Board's conduct of representation proceedings. When a representation

B. The Purpose Of The Six-Month Period Of Limitations Confirms Its Plain Meaning.

The purpose of Section 10(b) confirms its plain meaning. The six-month limitations period was newly adopted in 1947. Concerned that "people were being brought to book upon stale charges," Congress enacted the "rather brief limitation period . . . to shorten up the time in which respondents could be called to answer charges of unfair labor practice." *National Labor Relations Board v. Pennwoven, Inc.*, 194 F. 2d 521, 524 (C.A. 3).⁴ Enactment of limitations had been severely

petition is filed, looking towards a redetermination of the bargaining representative, the Board will ordinarily not entertain that petition if filed more than 150 days and less than 60 days before the end of so much the fixed term of an existing collective bargaining agreement which does not exceed two years. *Pacific Coast Ass'n.*, 121 NLRB No. 134, 42 LRRM 1477; cf., *National Labor Relations Board v. Geraldine Novelty Co.*, 173 F.2d 14, 16-17 (C.A. 2). In giving effect to the agreement as a bar, the Board refuses to inquire into the question whether the contracting union represented a majority of the employees when the agreement was executed. "With respect to the allegation that the Intervenor did not, on the date the contract was executed, represent a majority of the employees in the unit, it is the practice of the Board in representation cases, at least so far as the question of a bar to a proceeding is concerned, to presume the legality of a collective agreement and to refuse to admit evidence on the question whether at the time the contract was executed a majority of the employees covered by such contract had designated the contracting union as their bargaining representative. The regularity and legality of the 1949 contract, insofar as the majority representation question is concerned, must be presumed for the purpose of this proceeding." *Ivring Feller*, 90 NLRB No. 123, 26 LRRM 1284 (unreported); *Electro Metallurgical Co.*, 72 NLRB 1396, 1399.

⁴The House bill, as reported and passed, in addition to providing for a six-month limitation for the filing and service of a charge after the event, also provided a further six-month limitation upon the issuance of the complaint after the charge was filed.

criticized and sharply opposed, fear having been expressed that it would permit unfair labor practices to go unredressed, particularly in that six months was "the shortest statute of limitations known to the law . . .".⁵ But the view prevailed that "There must be a limitation as to time," and that "within 6 months the complainant against an unfair labor practice should be able to bring it to the attention of the National Labor Relations Board."⁶

Whether the redress of unfair labor practices should be barred by limitations, and the shortness of the period within which the bar should operate, are questions exclusively within the competence of Congress. Congress exercised its judgment by enacting a six-month statute of limitations. In this case the critical unfair labor practice was the inception of the relationship between the IAM and the Company on August 10, 1954. But

H.R. 3020, 80th Cong., 1st Sess., April 11 and 18, 1947, Sec. 10(b), in 1 Leg. Hist. 66-67, 193-194. The Senate bill, as reported and passed, contained only the first limitation. S. 1126, 80th Cong., 1st Sess., April 17, 1947, Sec. 10(b), in 1 Leg. Hist. 124; H.R. 3020, 80th Cong., 1st Sess., May 13, 1947, in 1 Leg. Hist. 252. The conference agreed to accept the Senate version, omitting the time limitation upon issuance of the complaint after the charge was filed, the thought being that delay in the issuance of the complaint would be obviated by "the increased membership of the Board and other changes in the administrative provisions of the act. . . ." H.Conf. Rep. No. 510, 80th Cong., 1st Sess., 53, in 1 Leg. Hist. 557; *National Labor Relations Board v. Pennwoven, Inc.*, 194 F.2d 521, 525, n. 2 (C.A. 3).

⁵ S. Min. Rep. No. 105, 80th Cong., 1st Sess., 5, 37; H. Min. Rep. No. 245, 80th Cong., 1st Sess., 90; 93 Cong. Rec. 3323, 4030, respectively in 1 Leg. Hist. 467, 499, 381, 2 Leg. Hist. 998, 1035.

⁶ 93 Cong. Rec. 4283 in 2 Leg. Hist. 1149; see also, H. Rep. No. 245, 80th Cong., 1st Sess., 40; S. Rep. No. 105, 80th Cong., 1st Sess., 26; H.Conf. Rep. No. 510, 80th Cong., 1st Sess., 53, respectively in 1 Leg. Hist. 331, 432, 557.

no charge was filed until ten months later. It could have been filed as easily within the prescribed six months of the event. Having waited four months too long, the action was forever barred. This is what it means to have a statute of limitations. Whatever harm ensues from an unredressed unfair labor practice is no different from the "loss which is inherent in the application of any period of limitations. Such periods are established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary." *Karantunghi v. Noble*, 332 U.S. 535, 539. And it is just as likely that the statute will bar a baseless claim as a meritorious one.

If, as here, despite the total dependence of the complaint on the alleged unfair labor practice which occurred on August 10, 1954, the Board may nevertheless proceed on the basis of a charge filed ten months later, why not twenty months, thirty months, or forty months later? And if, as here, the Board can undo the bargaining relationship after the second agreement, simply because of a defect in the original inception of the relationship, why not after the third, fourth, or fifth agreement? To prevent this Congress drew the line at six months. Either that line is to be respected or there is no line.

Adherence to the line is essential to realizing the purpose of Congress in enacting Section 10(b). It sought to obviate the evil of delayed litigation "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused." H. Rep. No. 245, 80th Cong., 1st Sess., 40, in 1 Leg. Hist. 331. In this case this mischief was already manifest. As the trial examiner observed (R. 346-347):

It is evident that with many witnesses testifying as to numerous different matters, it would protract this Report greatly to summarize all of the testimony, or to spell out fully the confusion and inconsistencies therein, *much of which is not too surprising, in view of the fact that, with respect to the events of August 1954, there had been a lapse of almost 15 months before testimony was given in November 1955.* [Emphasis supplied.]

The mischievous consequence of disregarding the line is graphically revealed in *Lively Photos, Inc.*, 123 NLRB No. 126, 44 LRRM 1064. In that case, the employer and the union, on May 17, 1954, entered into a collective bargaining agreement containing a union shop provision valid on its face. This agreement was continued in effect for about two years and two and one-half months. Then, on August 1, 1956, a second union shop agreement was entered into, with an expiration date of May 15, 1957, and with a provision for automatic renewal thereafter. This agreement was still in effect on November 3 to 5, 1958, the dates of the hearing. Meanwhile, on December 5, 1957, three years and eight months after the first agreement was entered into, the unfair labor practice charges were served, and a complaint thereafter issued. In adjudicating the complaint, the Board stated that "the crucial question . . . is whether on May 17, 1954, when the Company signed its contract with the Union, the latter had been previously designated as the bargaining representative by a majority of the Company's employees in an appropriate unit" (sl. op., p. 2, intermediate report). The Board found that on that date the union did not have a majority. And on the authority of the instant decision it rejected the defense of limitations. Accord-

ingly, on May 11, 1959, almost five years after the original inception of the bargaining relationship, the Board entered an order *inter alia* invalidating the agreements and severing the bargaining relationship. Chairman Leedom expressed the vice in the Board's position (44 LRRM 1064, 1065):

Chairman Leedom joins in the decision in this proceeding because he deems himself bound by the Board's decision in *Bryan Manufacturing Company, supra* [119 NLRB 502, enforced 264 F. 2d 575 (C.A.D.C.), certiorari granted, 360 U.S. 916]. He notes, however, that the decision herein, which contrary to the express statutory mandate requires that the parties litigate events which occurred many years before the filing and service of the charges, graphically illustrates the defect of the majority position in the *Bryan* case. The events in issue herein occurred in May, 1954; the charges were not filed until December, 1957; and the only certainty at the hearing in November, 1958, was that none of the witnesses could clearly recall the details of the events which had occurred some 4½ years before.

To disregard the six-month line not only disserves the pragmatic purpose of protecting a respondent against the bringing of a charge after "evidence has been lost, memories have faded, and witnesses have disappeared."⁷ It also offends the more fundamental policy which underlies every statute of limitations: A person against whom a wrong is alleged ought not to be forever under the anxiety of potential litigation and disruption of the *status quo*; a person who cherishes a right ought to be diligent to enforce it. "Prescription

⁷ *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 349.

and limitation are based on one of the deepest principles of human nature, the working of association with what one actually enjoys for a long time, whatever one's defect of title may be, and of dissociation from that of which one is deprived, whatever may be one's rights. The mind like any other organum gradually shapes itself to what surrounds it, and resents disturbance in the form which its life has assumed. In cases like the present, when the period of limitations is short, no doubt other but also important elements are predominant—the desirableness for business reasons of getting a quasi public transaction finished—but whatever the details, the principle involved is as worthy of respect as any known to the law.” Mr. Justice Holmes in *Dunbar v. Providence and Boston R.R. Co.*, 181 Mass. 383, 385.⁸

The principle of repose has special appeal in labor relations. Maintenance of the stability of an established bargaining relationship is as important a value as any in the industrial world. In this case, whatever defect there may have been in its inception, the findings establish that the relationship between the Company and the unions is viable and going, productive of many benefits for the employees and responsive to the needs of the plant community. Yet, despite two agree-

⁸ See also, Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 477, also in *Collected Legal Papers*, 199-200 (1920): “[T]he foundation of the acquisition of rights by lapse of time, is to be looked for in the position of the person who gains them, not in that of the loser. . . . A thing which you have enjoyed and used as your own for a long time, whether property or an opinion, takes root in your being and cannot be torn away without your resenting the act and trying to defend yourself, however you came by it. The law can ask no better justification than the deepest instincts of man.”

ments and the creation of an industrial way of life, the Board's order would uproot this relationship wholly.

The result is at war with the principle of repose—the stability it is designed to foster if a charge is not timely filed and served within the allowable six-month period. If the period of limitations has not run in this case, it never can. A bargaining relationship, defective only because of a misstep in its origin, would be perpetually vulnerable. No limitation would be applicable to it. There “never could be an end to the controversy because in the Board’s view the wrong was a continuing tort.” L. Hand, J., concurring in *National Labor Relations Board v. Childs Co.*, 195 F. 2d 617, 621 (C.A. 2). “To adopt the Board’s theory of the continuing violation is not in accordance with what we believe the intent of the Congress was in establishing the six-months limitation period.” *National Labor Relations Board v. Pennworn, Inc.*, 194 F. 2d 521, 526 (C.A. 3). The “case will never be closed until it is finally litigated” (*id.* at 525); yet to fail to quiet the controversy “would not conduce to that industrial peace which it is the overall purpose of the Act to secure.” L. Hand, J., *supra*, at 621-622.

C. The Legislative History Shows That A Prime Object Of The Statute Of Limitations Was To Safeguard A Union Security Agreement From Invalidation If Entry Into It Was Not The Subject Of A Timely Charge Filed Within The Requisite Period Which Began To Run From The Inception Of The Agreement.

The legislative history shows that a prime object of the statute of limitations was to safeguard a union security agreement from invalidation because of alleged illegality in its inception unless a charge had been filed within the prescribed time measured from the date of the execution of the agreement. The Senate

Report observed in its comment upon Section 10(b) that (S. Rep. No. 105, 80th Cong., 1st Sess., 26, in 1 Leg. Hist. 432):

The principal substantive change in this section is a provision ~~for a~~ 6-month period of limitations upon the filing of charges. The Board itself by adopting a doctrine of laches has to some extent discouraged dilatory filing of charges, *and a rider to the current appropriations bill (which if this amendment was adopted would no longer be necessary) contains a 3-month period of limitations with respect to certain kinds of unfair labor practices.* [Emphasis supplied.]

The rider to the then current appropriations bill to which the Senate Report referred provided that:

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an ~~an~~ agreement, or a renewal thereof, between management and labor *which has been in existence for three months or longer without complaint being filed* by an employee or employees of such plant: Provided, That, hereafter, notice of such agreement or renewal thereof shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at and accessible place of such agreement where said agreement shall be open for inspection by any interested person: Provided, further, that these limitations shall

⁹ The Senate Report is dated April 17, 1947. The appropriations bill pertaining to the NLRB then extant was H.R. 2700, 80th Cong., 1st Sess., which had been reported by the House Appropriations Committee on March 21, 1947, 28 days before the Senate Report issued. The Senate referred this appropriations bill to its Appropriations Committee on March 26, 1947, 22 days before the Senate Report issued. See Appendix A, *infra* pp. 101-103.

not apply to agreements with labor organizations formed in violation of section 158, paragraph 2, title 29, United States Code. [Emphasis supplied.]

Under this rider, the three-month limitations period it prescribed began to run from the time the agreement came into "existence," and if, "without complaint being filed by an employee or employees," the agreement "has been in existence for three months or longer," prosecution of a "complaint case arising over . . . [that] agreement" was barred. This rider was not only part of the then current appropriations bill but it had appeared in substantially the same form in each of the preceding NLRB Appropriation Acts beginning with that for the fiscal year ending June 30, 1944.¹⁰ The NLRB Appropriation Act, 1949 (62 Stat. 404), the first to be enacted after the effective date of the 1947 Taft-Hartley amendments, no longer contained a limitations rider, and none has since been included. The elimination of the riders was of course the consequence of the adoption of the general six-month limitations period in Section 10(b); as the Senate Report stated, upon the adoption of Section 10(b) the limitations riders upon appropriations "would no longer be necessary."

It is thus clear that, even before the adoption of Section 10(b), limitations were applicable to bar the invalidation of an agreement if a charge had not been filed within three months of the execution of the agreement and the other conditions of the rider were met.

¹⁰ NLRB Appropriation Act, 1944, 57 Stat. 515; NLRB Appropriation Act, 1945, 58 Stat. 567; NLRB Appropriation Act, 1946, 59 Stat. 477; NLRB Appropriation Act, 1947, 60 Stat. 698.

As stated, the first limitations rider upon the Board's appropriations had been enacted on July 12, 1943, for the fiscal year ending June 30, 1944, and it provided that (NLRB Appropriation Act, 1944, 57 Stat. 515):

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed: *Provided*, That hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person.

The immediate impetus to the adoption of this rider was the pendency of proceedings before the Board looking towards invalidation of closed shop agreements covering the employees of the Kaiser shipyards on the Pacific Coast. The vulnerability of the agreements lay in that, while executed at a time when the number of employees in the unit numbered about 40, they were applied when the complement mushroomed to the neighborhood of 20,000 to 30,000; relevant to this situation is the accepted rule that a collective bargaining agreement cannot validly grant exclusive recognition to a union at a time when "a group of employees is rapidly expanding, so that the initial work force cannot truly represent more than a small fraction of the contemplated total. . . ." ¹¹ The rider was enacted to

¹¹ *National Labor Relations Board v. Guy F. Atkinson Co.*, 195 F.2d 141, 144 (C.A. 9). Section 705(a), Title VII, Labor-Management Reporting and Disclosure Act, 1959, changes this rule

prevent disruption of the agreements at the Kaiser shipyards, and the means adopted was to insulate from complaint any agreements "in existence for three months or longer" without a charge filed. 89 Cong. Rec. 6566-69, 6949-54, 7029-34; N.L.R.B., Eighth Annual Report, 7 (1943); N.L.R.B., Ninth Annual Report, 4 (1944).

The language of the rider was general and designedly so; its impact was not meant to be confined to the Kaiser situation, but to assure that "labor relations should be stabilized all over the country" (89 Cong. Rec. 6568), and to this end to "adopt the principle of stabilization of union control in the plants where particular unions are now in control" (89 Cong. Rec. 7033). See also 89 Cong. Rec. 6566, 6567, 6953, 6954, 7029, 7034. As stated by the Comptroller General in his authoritative decision of October 21, 1943 (B-37051), after full quotation of relevant excerpts from the legislative history, "the Congress intended that existing agreements shall remain in effect and not be the subject of inquiry in proceedings by the National Labor Relations Board during the fiscal year 1944, regardless of the nature of the unfair labor practice that may be in issue in a particular case." 12 LRRM 2227, 2232. As explained by the Board, the rider "operates to preclude the Board from taking action to prevent unfair labor practices in any complaint case where there is involved an agreement between management and labor which has been in existence for 3 months or longer without charges being filed, wholly without regard to the illegality of

in the building and construction industry by authorizing entry into prehire agreements in that industry. S. Rep. No. 187, 86th Cong., 1st Sess., 27-29, 55-56; H. Rep. No. 741, 86th Cong., 1st Sess., 19-20, 50.

the contract or the nature of the unfair labor practices which have been committed." N.L.R.B., Eighth Annual Report, 7 (1943). The gist of the matter was succinctly put by Congressman Tarver (89 Cong. Rec. 6953):

... we should enact this proviso and stop this squabbling out there on the Pacific Coast or anywhere else in the country, especially when the contract, *whether it was proper at the time of its inception or not*, has been in effect for three months without complaint. [Emphasis supplied.]

The administrative interpretation and application of the limitations riders left no doubt that, regardless of the enforcement of the union security agreements, the agreements were nevertheless invulnerable to invalidation unless a charge had been filed within the requisite three months from their inception and the other conditions of the riders had been met. The Board dismissed at least fourteen cases in which the claim was that discharges made pursuant to agreements were discriminatory. N.L.R.B., Eighth Annual Report, 10 (1943). The Board explained that (*Id.* at 8):

Since it [the limitations rider] serves in many cases to protect illegal contracts, the amendment also protects unlawful conduct which stems from such contracts. Thus it may operate to sanction the discharge of an employee pursuant to a closed-shop contract, despite the fact that such contract is plainly illegal under the terms of the proviso to Section 8(3) of the Act. And in this regard, it is immaterial whether the illegality of the contract is due to the fact that it is made with a minority union or to the fact that it is made with a union which has been maintained or assisted by unfair labor practices on the part of the employer. By virtue of the amendment, the discharge is privi-

leged in either case unless a charge is filed within 3 months after the execution of the contract.

This was also the interpretation expressed by the Board in a release issued by it on April 20, 1944 in which for the guidance of the public it explained its views of assumed cases. 12 LRRM 2232-2241. It is worthwhile setting forth the first two cases posited by the Board. Case 1 and the Board's suggested answer are (12 LRRM 2232-33):

Case 1. Union A starts to organize the employees of the X Manufacturing Company with a view to becoming their bargaining representative under Section 9(a) of the Act. The Company, not wishing to deal with Union A, calls in a business agent of Union B, and signs a closed-shop agreement with that organization, although it knows that it represents only a small minority of its employees. Jones, an employee who has been active in promoting the cause of Union A, refuses to join Union B and four months later he is discharged. He files a charge on the next day.

Suggested Answer of NLRB: In the absence of the limitation in the Appropriations Act, the Board would have jurisdiction to hold his discharge a violation of Section 8(3) since it discouraged membership in one labor organization and encouraged membership in another. Moreover, although the proviso to Section 8(3) recognizes closed-shop agreements, the agreement in this case would not be a defense since it was not made with a representative designated by the majority of the employees in the appropriate bargaining unit. Under the Appropriations Act, however, the Board would have no jurisdiction since the charge was not filed until after three months subsequent to the execution of the contract. It is true that the particular unfair labor practice of which Jones com-

plained occurred just the day before the charge was filed, but to deem this a violation of the Act would necessitate passing upon the legality of the closed-shop contract.

In this case the Board clearly recognized that, although the agreement was made with a union that "represents only a small minority of the employees," the discharge under it could not be litigated, for to do so "would necessitate passing upon the legality of the closed-shop contract," a matter no longer open in that the charge had not been "filed until after three months subsequent to the execution of the contract."

Case 2 and the Board's suggested answer are also illuminating (12 LRRM 2233):

Case 2: Union A starts to organize the employees of the X Manufacturing Company with a view to becoming their bargaining representative under Section 9(a) of the Act. The Company warns its employees not to join Union A, but invites Union B to send organizers into its plant, solicit for membership among its employees, and instructs its foremen to tell employees to join Union B. Union B obtains applications for membership from a majority of the employees and a closed-shop agreement is executed between this organization and the Company. Four months after the agreement is signed, Union A files a charge alleging that the Company has interfered with the right of its employees to self-organization and the right to engage in concerted activities. The charges does not mention the closed-shop agreement.

Suggested Answer of NLRB: In the absence of the limitation in the Appropriations Act the Board would have jurisdiction to deem the Company in violation of Section 8(3), the closed-shop

agreement would not have been a defense, since it was executed with an 'assisted' organization. But it is our view, however, that the Appropriations Act would prohibit taking jurisdiction even on the basis of the 8(1) charge since it indirectly places in issue the legality of the agreement with Union B. to the same extent as would a charge alleging domination and support of Union B under Section 8(2) of the Act. As the Comptroller General stated in his opinion of Oct. 21, 1943, B-37051 "it cannot be said that Congress intended to restrict its (the Appropriations Act's) application to those cases where the agreement is directly attacked; nor, as a matter of fact, does it appear that the Congress even considered the extent to which the validity of the agreement must be in issue in a complaint case." The Board's customary remedy in cases such as the instant one is to direct the Company to cease recognizing Union B until it shall have been certified by the Board and to cease giving effect to the agreement with it. The direct result of such an order is the abrogation of the existing agreement to the same extent as a dis-establishment order in an 8(2) case.

The Board clearly recognized that, the charge having been filed more than three months "after the agreement is signed," the Board was powerless to place "in issue the legality of the agreement" or to enter an order resulting in the "abrogation of the existing agreement."

The NLRB Appropriations Act, 1945, for the fiscal year ending June 30, 1945 (58 Stat. 567), continued the 1944 limitations rider with certain amendments. The principal amendment was to except agreements with company-dominated unions from the operation of

the rider.¹² In the amended form, the rider was identical to that contained in "the current appropriations bill" to which the Senate Report referred in explaining the limitations provision in Section 10(b) (*supra*, p. 36), and in this identical amended form, the rider had also been incorporated in the intervening NLRB Appropriation Acts for 1946 (59 Stat. 377) and 1947 (60 Stat. 698). The Board recognized that under the 1945 amended form, as under the 1944 original form, once the three-month period had run without a charge filed, there was a bar to prosecution of complaints looking to invalidation of "contracts with unions who do not represent a majority of the employees covered by such contracts." N.L.R.B., Ninth Annual Report, 6 (1944).

Thus, when Congress enacted the limitations provision of Section 10(b), the question of applying limitations to union security agreements allegedly unlawful at inception was not *res nova*. On the contrary, begin-

¹² As explained by the Board, "While in general the 1945 limitation reads like the 1944 limitation, it differs from the old amendment in three important respects: (1) Whereas the previous limitation applied to company-dominated union cases, the present limitation leaves the Board free to proceed in all such cases; (2) under the 1945 amendment, in contrast to the 1944 limitation, the renewal of an agreement, even though by virtue of the operation of an automatic renewal clause, starts anew the running of the 3-month period during which a charge attacking the agreement may be filed; and (3) while under the old amendment a charge filed by any individual or labor organization would suffice, a charge will not prevent the operation of the present limitation unless it is filed by 'an employee or employees' of the plant covered by the agreement in question." N.L.R.B., Ninth Annual Report, 5-6 (1944). As to item (3), the Board thereafter took the view, concurred in by the Comptroller General, that a charge filed by a labor organization, authorized by an employee to do so, validly invoked the Board's jurisdiction. Opinion of the Comptroller General, March 14, 1945, 16 LRRM 2529.

ning July 12, 1943 (*supra*, p. 38), through the medium of the appropriation riders, Congress had safeguarded such agreements from invalidation because of alleged illegality at inception if no charge had been filed within three months of entry into the agreement and the other conditions of the riders had been met. The six-month limitation of Section 10(b) applicable to all unfair labor practices replaced the three-month limitation of the riders applicable to agreements. As the Senate Report stated, upon adoption of Section 10(b) the limitations riders upon the Board's appropriations "would no longer be necessary" (*supra*, p. 36). To say, therefore, that Section 10(b) does not protect union security agreements allegedly invalid at inception not only renders untrue the statement that the "riders would no longer be necessary." It also requires the conclusion that, when Congress for the first time in 1947 enacted a statute of limitations having general applicability to all unfair labor practices, it was at the same time and by that very act eliminating the already existing applicability of limitations to union security agreements. This is not possible.

To overcome the relevance of the appropriations riders we anticipate that the Board may make two arguments. We turn to these:

1. While "the *current* appropriations bill" to which the Senate Report referred, and the preceding Appropriation Acts, pertained to an agreement "between management and labor which has been in existence for three months or longer without complaint being filed," the NLRB Appropriations Act, 1948, for the fiscal year ending June 30, 1948 (61 Stat. 276), substituted the words "an employer and a labor organization which represents a majority of his employees in

an appropriate bargaining unit" for the words "management and labor." The 1948 Appropriation Act was passed on July 8, 1947, *after* the Taft-Hartley amendments were enacted (June 23, 1947) but before they became effective (August 22, 1947; Sec. 104), and was the last NLRB Appropriation Act to contain a limitations rider.

The Board contends that since the last limitations rider was applicable to agreements between "an employer and a labor organization which represents a majority of his employees in an appropriate bargaining unit," Congress cannot be thought in Section 10(b) to have "granted immunity to contracts regardless of the union's majority status" (Bd. br. in opp. to cert. p. 11). We do not pause to consider the soundness of the assumption that the 1948 limitations rider is not applicable to an agreement with a union not the designee of a majority when executed—an interpretation which renders the rider meaningless and which the Board in the past expressly refrained from adopting.¹³ For the short answer is that Section 10(b) does not relate to the 1948 limitations rider as enacted, but to the form which appeared in "the *current* appropriations bill" and which was identical to the preceding limitations riders. The Senate Report, which stated that under the new Section 10(b) limitation the "rider to the current appropriations bill . . . would no longer be necessary" (*supra*, p. 36), is dated April 17, 1947. The *only* appropriations bill pertaining to the NLRB then extant was H. R. 2700, 80th Cong., 1st Sess., which had been reported by the House Appropriations Com-

¹³ *Guy F. Atkinson Co.*, 90 NLRB 143, 146, n. 11, declining to pass upon this among other bases of the examiner's findings *id.* at 157-59, enforcement denied, 195 F.2d 141 (C.A. 9).

mittee on March 21, 1947, 28 days *before* the Senate Report issued. H. Rep. No. 178, 80th Cong., 1st Sess. It was *this* appropriations bill which the Senate referred to its Appropriations Committee on March 26, 1947, 23 days *before* the Senate Report issued (*infra*, p. 102). And the limitations rider in this appropriations bill contained the exact same language—"an agreement . . . between management and labor"—which had existed in all the four preceding appropriation acts. It was to the rider in *this* appropriations bill—which was "the *current* appropriations bill"—that the Senate Report necessarily referred, it being the only one in being when the Senate Report was drafted and issued. The Senate Report thus related the limitations provision of Section 10(b) precisely to those limitations riders which had from the beginning precluded the use of NLRB funds "in any way in connection with a complaint case arising over an agreement, or a renewal thereof, *between management and labor* which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant. . . ."

And this of course is the only view which makes any sense of the limitations provision of Section 10(b), of the Senate Report which explains it, and of the history which precedes it. It is to this history which we must look, particularly in view of the extensive legislative debate which preceded the original adoption of the limitations riders and the ensuing record of administrative interpretation and application. By the time the 1948 limitations rider was enacted, Section 10(b) had already been passed, the future applicability of limitations to unfair labor practices had already been

legislatively settled, and the scope of the 1948 limitations rider as enacted was utterly academic.¹⁴

2. The Board's second argument seems to come to this: The limitations provision of Section 10(b) does not run as to an agreement invalid on its face while it is in effect; the limitations riders in the appropriation acts would have run as to such an agreement; hence the limitations riders, having "far broader sweep than Section 10(b)," do not provide a valid source for the interpretation of Section 10(b).¹⁵ (Bd. br. in opp. to cert. pp. 10-11.)

The argument is fallacious. The limitations riders operated during the period of the Wagner Act. Under that act a labor organization was permitted as a matter of federal law maximum union security in the form of a closed shop agreement.¹⁵ During that period, therefore, the question of the invalidity of an agreement on its face could not ordinarily arise. Obviously the limitations riders were not drafted with an eye to a problem which did not then exist. It thus cannot be said, as the Board would have it, that the limitations riders had "broader sweep" than Section 10(b), when all that can be said is that they were not addressed to a problem which did not exist.

But the problem which did exist under the Wagner Act, and which continued to exist under the Taft-Hartley Act, was the execution of an agreement with a union which did not represent a majority. And the riders which were operative prior to the enactment of

¹⁴ For convenience, we attach as an appendix to this brief a full statement of the evolution of the 1948 NLRB Appropriation Act, *infra*, pp. 101-105.

¹⁵ *Colgate-Palmolive-Peet Co. v. National Labor Relations Board*, 338 U.S. 355.

the Taft-Hartley amendments were directed precisely to this problem and did resolve it in favor of having limitations run from the inception of the agreement. In interpreting the new Section 10(b) limitations provision, the riders' precedent treatment of the problem which did exist cannot be sapped of relevance because the riders did not treat with a problem which did not exist.

D. The Precedents Establish That An Event Within The Allowable Six-Month Period Cannot Be Converted Into An Unfair Labor Practice In Reliance Upon An Unfair Labor Practice Which Preceded The Six-Month Period.

As we have said, but for the barred unfair labor practice of August 10, 1954, no event within the allowable six-month period could be found to be a violation. The precedents establish that a benign event within the allowable six-month period cannot be converted into an unfair labor practice in reliance upon a barred violation which occurred before then.

1. An employer denied the application for reinstatement made by strikers who had been permanently replaced during the strike. The denial was proper if the strike was economic in nature; it was improper if the strike was caused or prolonged by unfair labor practices.^{15a} Whether it was an economic or an unfair

^{15a} "It is settled law that where the strike is an economic one the employer can replace the striking employees with others in an effort to carry on the business and is not required to discharge those hired to fill the places of strikers upon the election of the latter to resume employment. . . . However, if the strike is caused by an unfair labor practice, the striking employees are entitled to reinstatement upon the termination of the strike." *National Labor Relations Board v. Wooster Division of Borg-Warner Corp.*, 236 F.2d 898, 906 (C.A. 6), certiorari granted on other questions, 353 U.S. 907, affirmed in part and reversed in part, 356 U.S. 342.

labor practice strike depended upon whether it was caused by an unlawful refusal to bargain. But the refusal to bargain preceding the strike occurred more than six months before the filing and service of the charge. The Board dismissed the complaint alleging the discriminatory refusal to reinstate the strikers because it was based upon an unfair labor practice which antedated the charge by more than six months. *Greenville Cotton Oil Co.*, 92 NLRB 1033. The Board explained that (*id.* at 1034-1035):

Only if . . . [the strikers] can show that their strike was caused or prolonged by unfair labor practices are they entitled to preferred treatment.

But it is just such a showing which the proviso to Section 10(b) expressly prohibits, for any finding of an unfair labor practice strike here would necessarily be "based upon" unfair labor practices occurring more than 6 months prior to the charge. Because the proviso thus precludes finding an unfair labor practice strike and the consequent discriminatory refusal to reinstate the strikers, we must dismiss this allegation of the complaint.

The Court of Appeals for the Fifth Circuit affirmed, stating that "we agree with the Board that what the union is in effect seeking to do is to use the happenings after June 18th [the date six months preceding the filing of the charge] as mere connective incidents wherewith to bridge the fatal gap in time between the happenings really relied on as unfair labor practices and the six months' bar, hoping thereby to cross over the six months' barrier which would otherwise preclude the charge." *American Federation of Grain Millers v. National Labor Relations Board*, 197 F. 2d 451, 454 (C.A. 5):

The operative facts in *Grain Millers* and the instant case are identical. In *Grain Millers*, the act antedating the six-month period is the employer's refusal to bargain with the union; in this case, the act is the employer's recognizing and contracting with the union when it does not have a majority. Both acts are unmistakable unfair labor practices; both acts are indispensable predicates for finding a violation within the six-month period. And here, as there, because "the happenings really relied on as unfair labor practices" antedated the filing of the charge by more than six months, Section 10(b) bars their importation into the allowable six-month period.

The court below cites *Grain Millers* for the proposition that the Board is prohibited . . . from making any legal conclusion with regard to events outside the statutory period," and it then seeks to distinguish the instant case with the statement that: "Although the Board in the instant case must look to the facts surrounding the making of the 1954 contract, its ultimate holding depends on their mere *existence* rather than on ascribing legal significance to those facts standing alone" (R. 474, emphasis in original). This verbalism will not withstand analysis. The finding in this case is that, on August 10, 1954, "since the IAM was not the majority representative, the respondent Company, regardless of its motives, illegally assisted and supported the IAM when it granted recognition to and contracted with the IAM" (R. 413). The Board could hardly have been more unequivocal in "making" a "legal conclusion with regard to events outside the statutory period"; and the events within the period are converted into an unfair labor practice precisely because of the "legal significance" ascribed to the events.

outside the period. The relevant fact is not that the IAM did not have a majority on August 10, 1954; there is in every case a point in time prior to the recognition of a union as the representative when it does not have a majority and is in the process of mustering one. The relevant fact is that, at a time when the IAM did not have a majority, the Company recognized and contracted with it as the representative. And this fact is relevant precisely because it constitutes the unfair labor practice of rendering unlawful assistance to a union and abridging the employees' exercise of a free choice. It is solely because of this unfair labor practice that the Board is able to say that "It follows therefore, and we find, . . . that the Respondent Company violated Section 8(a)(1), (2), and (3) and the Respondent Unions 8(b)(1)(A) and (2) by maintaining in effect the 1954 agreement and by executing and maintaining in effect the 1955 agreement, both of which contained unlawful union security clauses." (R. 437, emphasis supplied.) Eliminate this unfair labor practice outside the period and nothing follows within the six-month period. It is thus impossible to ascribe greater "legal significance" to the barred unfair labor practice.

2. An employer allegedly formed, supported, and dominated a labor organization. But the evidence to establish the allegation antedated the filing and service of the charge by more than six months. Section 10(b) of the Act operates, the Board holds, to preclude a finding of formation, support, and domination of the organization by the employer. *Universal Oil Products Co.*, 108 NLRB 68; *Armco Drainage & Metal Products, Inc.*, 106 NLRB 725, 730-731, enforced as modified, 220 F.2d 573 (C.A. 6), certiorari denied, 350 U.S. 838;

Tennessee Knitting Mills, 88 NLRB 1103, 1104-1105. This is so despite the fact that the organization continues to exist and function within the allowable six-month period. The taint in its origin nevertheless cannot be reached, because it is an unfair labor practice antedating the period.

The instant case occupies an *a fortiori* position. While the relationship between the Company and the unions continues to exist and function within the allowable six-month period, the only blemish relates to an alleged defect in the inception of the relationship antedating the period. And the unions here, as the Board found, were not sponsored or dominated by the Company (R. 413-414). If a complaint cannot be based upon the alleged dominated origin of a labor organization once the six months has run, how much less can a complaint be based upon the alleged defective inception of a relationship with an unsponsored and undominated labor organization.

3. These two situations are representative of a host of others in which it has been held that the six-month period of limitations operates as a bar: the alleged discriminatory refusal to grant a wage increase to employees within the allowable period based exclusively upon evidence of discrimination antedating the period (*News Printing Co., Inc.*, 116 NLRB 210); the alleged discriminatory layoff of an employee within the allowable period based exclusively upon evidence of a discriminatory reduction in his seniority antedating the period (*Bowen Products, Inc.*, 113 NLRB 731); and the alleged discriminatory denial of an application for full reinstatement within the allowable period based exclusively upon the employee's discriminatory discharge antedating the period (*National Labor Rela-*

tions Board v. Pennwoven, Inc., 194 F.2d 521 (C.A. 3); *National Labor Relations Board v. Childs Co.*, 195 F.2d 617 (C.A. 2)). In all these cases, as in this case, unobjectionable conduct within the period was sought to be converted into an unfair labor practice in reliance upon objectionable conduct antedating the period. There, as here, Section 10(b) operates as a bar.

E. The Theory Of The Board Is Based Upon A Misapplication Of Two Concepts: (1) Section 10(b) Is A Statute Of Limitations And Not A Rule Of Evidence; (2) Continuing Violation.

To support its conclusion that Section 10(b) does not operate as a bar, the Board sloganizes on two concepts: (1) Section 10(b) is a statute of limitations, not a rule of evidence; (2) continuing violation.

1. *The concept that Section 10(b) is a statute of limitations and not a rule of evidence:* The Board states that Section 10(b) is a statute of limitations and not a rule of evidence (R. 432-433); that it therefore does not bar receipt in evidence of events antedating the allowable six-month period (R. 433); that consideration of that antedating evidence establishes that the Company recognized and contracted with the IAM when it did not have a majority and for that reason the union security agreement was invalid at inception (R. 434-435); and, therefore, by reason of this initial invalidity, maintenance of the original agreement and execution and maintenance of the successor agreement within the six-month period may be found to be an unfair labor practice (R. 436-437).

To reason in this fashion is to end with the conclusion that Section 10(b) is not only not a rule of evidence, it is not a statute of limitations either. For

under this view, whenever conduct within the allowable period is connected with conduct antedating the period, as is virtually always the case, the conduct outside the period may be adjudicated an unfair labor practice in order to furnish the predicate for a violation within the period. And the order which the Board would then enter is in every significant respect identical to the order which it would have entered had a timely charge been filed and served in relation to the earlier conduct.¹⁶ The conclusion is inescapable that this interpretation "would in effect render Section 10(b) meaningless." *Bowen Products Corp.*, 113 NLRB 731, 732.

The concept that "Section 10(b) enacts a statute of limitations and not a rule of evidence" (*Arlson Manufacturing Co.*, 88 NLRB 761, 766) has no such engulfing meaning. It simply means that Section 10(b) does not erect a wall shutting from view the world as it existed before the six-month period. If a refusal to bargain is alleged, obviously the union's certification a year before is admissible to establish its representative status; if a discriminatory discharge is alleged, obviously the employee's exemplary work record for many years before is admissible to show that the inefficiency assigned by the employer as the

¹⁶ The only concession which the order in this case makes to Section 10(b) as a statute of limitations is that, in requiring the reimbursement to the employees of the checked-off initiation fees and dues, the sums collected before the allowable six-month period are excluded (R. 442, 415). As the Court of Appeals for the Third Circuit stated, in considering whether such a limited exclusion gave sufficient scope to Section 10(b), "We do not think that such an interpretation of the statute accomplishes the legislative purposes." *National Labor Relations Board v. Pennwoven, Inc.*, 194 F.2d 521, 525.

reason for the dismissal is an artifice. Even evidence of unfair labor practices as such may be received antedating the six-month period. But such evidence is "admissible *only as a background for interpretation or clarification*" (*Greenville Cotton Oil Co.*, 92 NLRB 1033, 1034, n. 6, affirmed, 197 F.2d 451 (C.A. 5))¹⁷ (emphasis supplied); it may not be given "independent and controlling weight" (*Universal Oil Products Co.*, 108 NLRB 68, 69-70, and cases cited *infra*, pp. 56-57).

It is this vital qualification that the Board ignores. It gives controlling significance to its finding that on August 10, 1954 the Company recognized and contracted with the IAM when it did not have a majority. It is this unfair labor practice that is the exclusive foundation for its conclusion that offenses occurred within the allowable period. Evidence of unfair labor practices antedating the period is thus used, not as background evidence, but as the sole evidence upon which to predicate the violations found.

"But, because of Section 10(b), no unfair labor practice finding may be made to rest upon the bare presumption of continuity. More is required, and that in the form of independent proof that within the 10(b) period the Respondent engaged in some affirmative conduct that was itself illegal. . . ." *Local Union No. 1418, General Longshore Workers*, 102 NLRB 720, 730, enforced, 212 F.2d 846 (C.A. 5). "Events before that time may be considered for the purpose

¹⁷ See also, *National Labor Relations Board v. Clausen*, 188 F.2d 439, 443 (C.A. 3), cert. denied, 342 U.S. 868; *National Labor Relations Board v. General Shoe Corporation*, 192 F.2d 504, 507 (C.A. 6), cert. denied, 343 U.S. 904; *Paramount Cap Mfg. Co. v. National Labor Relations Board*, 260 F.2d 109, 112-113 (C.A. 8).

of elucidating and explaining the character and quality of alleged illegal conduct occurring within the limitations period, but unless some illegal conduct is independently established within that period, such earlier events may not support an unfair labor practice finding." *Armco Drainage & Metal Products, Inc.*, 106 NLRB 725, 730, enforced as modified, 220 F.2d 573 (C.A. 6), cert. denied, 350 U.S. 838. And so, "While evidence . . . concerning conduct which occurred prior to the statutory 6-month period may be utilized as background evidence to evaluate a Respondent's subsequent conduct, it is well established that *Section 10(b) of the Act precludes the Board from giving independent and controlling weight to such evidence.*" *News Printing Co3, Inc.*, 116 NLRB 210, 212 (emphasis supplied). See also, *Universal Oil Products Co.*, 108 NLRB 68, 69-70.

Thus the proper line is to receive the events antedating the six-month period as "background evidence" but not to give them "independent and controlling weight." Only in this way can the dual objectives be served of affording maximum intelligibility to the events within the period while at the same time effectively preserving the function of Section 10(b) as a statute of limitations. The court below purported to recognize that the receipt of evidence antedating the six-month period is "subject to the important qualification that testimony as to such barred events may be received only as background evidence and may not be given independent significance" (R. 471).¹⁸

¹⁸ Quoting from this Court's decision in *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 705, the court below stated that this was the "important qualification" upon the "established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from

But this was a promise to the ear broken to the hope. For the court gave the barred unfair labor practice just that "independent significance" which it stated was precluded.

For, to repeat, the controlling event in this case is the Company's act of recognizing and contracting with the IAM on August 10, 1954 when the IAM did not have a majority. It is this barred unfair labor practice, which occurred ten months before the first charge was filed, that is the exclusive foundation for the conclusion that offenses occurred within the allowable period. But for this barred act there is *no* evidence of a violation within the six-month period. The unfair labor practice antedating the period is thus used, not as background evidence, but as the sole evidence upon which to predicate the violation found. The barred event was given more than "independent significance," it was given exclusive significance. This distortion is wholly outside the justification for receiving evidence of events antedating the allowable period. It nullifies the prescriptive purpose of Section 10(b).

2. *Continuing violation*: The Board reasons that, "when parties agree to a union security arrangement

forming the basis for a suit, may nevertheless be introduced to show the purpose and character of the particular transactions under scrutiny" (R. 471). The court below should also have observed the qualification stated in the preceding sentence of this Court's opinion in *Cement Institute*: "The Commission did not make its findings of post-1929 combination, in whole or in part, on the premise that any of respondents' pre-1929 or NRA code activities were illegal" (333 U.S. at 704-705, emphasis supplied). In this case, on the contrary, the Board did premise its findings within the six-month period upon its finding that the conduct preceding the six-month period was "illegal." Moreover, neither *Cement Institute*, nor the two cases cited in it, presented limitations questions.

which does not conform to the requirements of the proviso to Section 8(a)(3), they violate the Act not only when they agree to the arrangement but every day that they continue the unlawful arrangement in effect" (R. 434). The Board further states that it "can perceive no difference in illegality between a contract unlawful on its face, that is, one prescribing a form of union security prohibited by the Statute, and a contract invalid because certain requisites to the making of a valid contract have not been complied with. In both instances the invalidity begins at a point in time and continues so long as the unlawful contract remains in effect" (*ibid.*). The Board concludes that, as Section 10(b) does not bar issuance of a complaint based on continuance in effect of an agreement *invalid on its face* but executed more than six months before the filing of the charge, the same must be true of an agreement *valid on its face* but illegal because executed when the contracting union did not have a majority (R. 434-435).

The distinction between the two is obvious and decisive. With an agreement invalid on its face, no evidence but the agreement is needed to establish the violation of maintaining an unlawful arrangement in effect. No proof of events antedating the allowable six-month period is requisite; no question arises of reliance upon a barred unfair labor practice to establish the violation. In this context the concept of continuing violation is relevant only in refutation of the defense that because the arrangement was inaugurated more than six months before the charge was filed its current maintenance in effect is immune. To that argument the simple and direct answer is that the illegality, patent on the face of the agreement and

requiring no proof of antecedent events, did not cease with its inception but continued to date.

Not so with an agreement valid on its face. It is not possible to say of such an agreement that on its face its maintenance in effect is a continuing violation. Only proof of illegality in its inception would furnish the predicate for a statement that it is illegal in its continuance. And it is precisely this showing that Section 10(b) operates to preclude when establishment of illegality in inception depends upon proof of an unfair labor practice antedating the filing of the charge by more than six months. That is this case.

The cogent statement of the distinction by the dissenting members of the Board bears repetition (R. 450-452):

Our colleagues say that in both types of situations involving unlawful union-security agreements, the invalidity begins at a point in time and continues to exist while the agreement remains in effect, the distinction between the two types being in the manner of proving illegality. However, this approach seems to overlook the further distinction that stems from the reasons for the invalidity of the two types of agreements. Thus, in the first type of situation, where the reason for the invalidity lies in the language of the agreement, the circumstances which cause the agreement to be invalid not only existed at the point of time in the past when the agreement was executed, but continue to exist as a present reason for invalidity each day that the agreement continues in effect. Although the continued invalidity of the agreement may therefore in a sense be related to its initial invalidity, such continued invalidity is not based solely on the initial invalidity but has a continuing independent basis. For this reason, the unfair labor practices involved in the main-

tenance of such an agreement may be established merely by proof of maintenance at any point of time, without reference to the circumstances surrounding its execution. Consequently, the fact that the charges may have been filed more than 6 months after the execution of such an agreement can have no effect on the Board's power to find, based upon evidence as to the maintenance of the agreement within 6 months of the filing of the charges, that such maintenance was an unfair labor practice.

On the other hand, in the second type of situation involved herein, where the reason for the invalidity assertedly lies in a failure in executing the agreement to comply with some or all of the requisites for making a valid union-security agreement, the circumstances which cause the agreement to be invalid existed only at the point in time in the past when the agreement was executed and are not thereafter repeated. For this reason, therefore, the continuing invalidity of the agreement is directly related to and is based solely on its initial invalidity, and has no continuing independent basis. Accordingly, although an agreement invalid in its inception may continue to be invalid throughout its life, the fact of its invalidity and the consequent existence of unfair labor practices cannot be established merely by proof that the agreement was being maintained at some point in time subsequent to its execution, but can only be established by proof of the facts surrounding its execution in the past, which created the initial invalidity. When as here, therefore, the charges are filed more than 6 months after the execution of the agreement, proof of its invalidity and the consequent unfair labor practices can only be established by reliance on evidence of events which occurred more than 6 months before the filing of the charge. This Congress expressly precluded by Section 10(b).

The court below seeks to finesse the difference. It states that within the six-month period union membership and dues payment were "contractually compelled"; that these "unfair practices . . . are positive acts which are both continued and repeated"; and "where the violations are of this character, i.e., continued and repeated," it is "appropriate for the Board to rely on events outside the statutory period to establish a critical element of proof of the offense" (R. 472). The Board espoused no such notion. And for obvious reasons. For what the court below describes as "unfair practices" and "violations" are the normal and legitimate attributes of the administration of any union security agreement. The very reason for being of a union security agreement is to require the employee to obtain union membership by paying initiation fees and to retain union membership in good standing by paying periodic dues. This the statute permits in express terms. (Proviso to Section 8(a)(3): *Radio Officers' Union v. National Labor Relations Board*, 347 U.S. 17, 40-42). In a study of 1,653 collective bargaining agreements, covering 5,549,000 workers, the Bureau of Labor Statistics found that union security was provided for in 75 per cent of the agreements, either by a union shop provision (63 per cent) or by a maintenance of membership clause (12 per cent).¹⁹ It would come as a shocking surprise to the parties to these agreements, and the workers covered by them, to learn that union membership and dues payment pursuant to the union security terms of the agreements constitute "unfair practices" and "violations." Union membership and dues payment pursu-

¹⁹ Hammond and Nix, *Union-Status Provisions in Collective Agreements, 1952*, 76 Monthly Labor Review 383, 384-385 (1953).

ant to the terms of a union security agreement valid on its face can be said to be "unfair practices" and "violations" only by showing that one of the conditions requisite to entry into the agreement has not been met. It is this showing that Section 10(b) precludes when execution of the agreement antedates the filing of the charge by more than six months. In short, the court below would justify piercing the six-month period by calling the acts involved in the administration of a union security agreement "unfair practices" and "violations", whereas the only legal basis for characterizing the acts as "unfair practices" or "violations" arises only after the six-month period has already been breached. This is a brilliant example of lifting oneself by one's own bootstraps.

The bootstrap character of the argument is further shown by the fact that it fails to account for much of the Board's findings and order. The Board found that the Company violated Section 8(a)(1) and (2) *independently* of the union security provisions of the agreements. Only the Company's violation of Section 8(a)(3) and the unions' violation of Sections 8(b)(1)(A) and (2) were based on the union security provisions.

Thus, the examiner found that, "since the IAM was not the majority representative, the Respondent Company, regardless of its motives, illegally assisted and supported the IAM when it granted recognition to and contracted with the IAM" (R. 413). In a footnote to that finding, the examiner stated (R. 413, n. 98):

See Adams, D. Goettl and Gus Goettl d/b/a International Metal Products Company, 104 NLRB 1076, 1077, wherein the Board found violations of Section 8(a)(1) and (2) of the Act, in a situa-

tion where the contract does *not* appear to have included a union-security provision. The holding of the Board is based squarely on the fact that the contracting union "was not the majority representative of the employees involved when recognition was granted and the contract executed." [Emphasis supplied.]

Finding a violation of Section 8(a)(1) and (2), based solely upon an employer's recognition of and execution of a contract with a union that does not represent a majority, is old law. "The recognition of, and execution of a collective bargaining contract with, a minority union constitutes unlawful assistance. . . . *Berhard-Altmann Texas Corp.*, 122 NLRB No. 142, 43 LRRM 1283, 1284; see also, *International Harvester Co.*, 87 NLRB 1123, 1125; *Bowman Transportation, Inc.*, 112 NLRB 387, 399-400, 113 NLRB 786, affirmed as modified, 355 U.S. 453. The inclusion of a union security provision in the agreement accents but is not essential to the violation. "Even without a contractual requirement for compulsory union membership, an employer illegally assists and supports a labor organization by granting it exclusive recognition when he knows it does not represent a majority in an appropriate bargaining unit at the time the grant is made.

²⁰ In this case, decided on February 6, 1959, the Board, for the first time, decided that such conduct, in addition to being a violation of Section 8(a)(1) and (2) by the employer, was also a violation of Section 8(b)(1)(A) by the union. Although disclaimed by the Board majority, the dissenting member effectively demonstrates that the finding of a violation of Section 8(b)(1)(A) is based on the Board's recent expansion of the scope of this section (43 LRRM at 1285-86), the validity of which is before this Court in *National Labor Relations Board v. Drivers Local Union No. 639*, 356 U.S. 963, granting certiorari to review the judgment in 43 LRRM 2156 (C. A. D. C.), denying enforcement of the order in *Curtis Brothers, Inc.*, 119 NLRB 232.

The illegal assistance is only aggravated where, as here, the agreement that grants recognition also requires the covered employees as a condition of their employment to join and pay dues to a labor organization they have not freely chosen." *John B. Shriver Co.*, 103 NLRB 23, 38; see also *Charles W. Carter Co.*, 115 NLRB 251, 262.

Accordingly, an argument which seeks to avoid the applicability of Section 10(b) in reliance upon the union security provisions of the agreements fails to account for the Board's finding of a violation of Section 8(a)(1) and (2) of the Act, based upon recognizing and contracting with the IAM when it did not have a majority regardless of the union security provisions. By the same token, it fails to account for parts 1(1)(B)(c), and 2(a) of the Board's order and the corresponding provisions of the notice (R. 438, 439, 457-459). These require that, until the unions are certified by the Board, the Company shall withdraw and withhold recognition from the unions and cease performing or giving effect to the agreements. This is the standard remedy for assisting a union by recognizing and contracting with it when it does not have a majority. *National Labor Relations Board v. District 50, United Mine Workers*, 355 U.S. 453.

In short, the applicability of the limitations provision of Section 10(b) can hardly be explained away by an argument which relies upon the union security provisions of the agreement, when a significant part of the Board's unfair labor practice findings and order do not depend at all upon the union security element.

Finally, the case law, as the dissenting Board members effectively demonstrate in their opinion (R. 452-

457), is in keeping with the distinction between an agreement valid on its face and one invalid on its face. Where an agreement is invalid on its face, as in providing for a closed shop²¹ or in investing a union with exclusive power to resolve seniority controversies,²² no more than proof of the current effectiveness of the agreement is necessary to establish a present violation, as the cases hold.²³ Such cases furnish no authority

²¹ *National Labor Relations Board v. United Hoisting Co., Inc.*, 198 F.2d 465, 468-469 (C.A. 3), cert. denied, 344 U.S. 914; *National Labor Relations Board v. F. H. McGraw & Co.*, 206 F.2d 635, 639 (C.A. 6).

²² *National Labor Relations Board v. Dallas General Drivers*, 228 F.2d 702, 705 (C.A. 5); *National Labor Relations Board v. International Brotherhood of Teamsters*, 225 F.2d 343 (C.A. 8) (wherein no question of limitations pertaining to the contract was in any event raised or considered at all either before the Board or court). We do not acquiesce in the substantive view that conferring exclusive power upon a union to resolve seniority controversies is invalid, but this of course is not material to the question of limitations presented here.

²³ The Board majority also relies upon *Guy F. Atkinson Co.*, 90 NLRB 143, enforcement denied without reaching limitations grounds, 195 F.2d 141 (C.A. 9) (R. 434-435). In that case, however, the agreement contained a closed shop provision, and was therefore invalid on its face. The agreement had been executed under the Wagner Act, but the contracting employer applied it under the Taft-Hartley Act, and to defend performance of it relied upon the saving provision of Section 102 of the amended Act. That section provides in substance that a closed shop agreement entered into under the Wagner Act could be performed under the Taft-Hartley Act, "if the performance of such obligation would not have constituted an unfair labor practice under Section 8(3) of the National Labor Relations Act prior to the effective date of this title . . .". The contracting company could not establish this defense, the Board finding that the work force at the time the contract was signed was not representative of that shortly to be employed. For that reason performance of the contract would have constituted an unfair labor practice under Section 8(3) of the National Labor Relations Act prior to the

for the view that the statute of limitations does not run from the inception of an agreement valid on its face.

The court below states that it "uphold[s] the Board's order under the authority of *NLRB v. Gannett News Co.*, *supra*, 197 F.2d 719 (2d Cir. 1952), . . . [affirmed upon the grant of a petition for certiorari raising other questions, 347 U.S. 17] and *Katz v. NLRB*; *supra*, 196 F.2d 411 (9th Cir. 1952)" (R. 475). But, as the court itself recognized (R. 470-471), the invalidity of the agreements in the cited cases was established by a fact in existence within the six month period; there was no need to look to any event antedating the six-month period to establish the illegal elements. "Here, on the contrary, it is an unfair labor

effective date of this title," and therefore Section 102 did not save performance of the contract which was otherwise invalid on its face. In this posture of the case, no limitations issue was or could be raised or considered in a context pertinent to any question presented here.

*The cited cases were decided under that part of the proviso to Section 8(a)(3)—since repealed (Public Law 189, 82d Cong., 1st Sess.)—which had required, in order to validate any union security agreement, that "following the most recent election held as provided in section 9(c) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement." An agreement valid on its face, but unsupported by the requisite certificate of the contracting union, was illegal, and a complaint could properly issue based upon the maintenance of the agreement in effect although executed more than six months before the filing and service of the charge. However, the violation was established by proof of the existence of the agreement, plus proof of the lack of the certificate (see Rule 44(b), Fed. R. Civ. Proc., made applicable to the Board by Section 10(b) of the Act), both of which were facts in being within the allowable six-month period; there was no need to look to

practice antedating the period which is the exclusive foundation for finding a violation within the period. The court below can hardly invoke the "authority" of cases in which "the present question was not involved. . . ." *Wright v. United States*, 302 U.S. 583, 593.

None of the other cases cited by the Board majority in its opinion support its position. On the contrary, as in *Local Union 1418, General Longshore Workers*, 102 NLRB 720, 730, enforced, 212 F.2d 846 (C.A. 5), cited at R. 433, n. 12, the Board explicitly stated that, "But, because of Section 10(b), no unfair labor practice finding may be made to rest upon the bare presumption of continuity. More is required, and that in the form of independent proof that within the 10(b) period the Respondent engaged in some affirmative conduct that was itself illegal . . ."; and, as in *Pottlatch Forests, Inc.*, 87 NLRB 1193, 1211, enforcement denied without reaching limitations questions, 189 F.2d 82 (C.A. 9), cited at R. 433, n. 11, the alleged discriminatory layoffs "occurred well within the statutory period limited by Section 10(b). The Respondent's earlier conduct [antedating the allowable six-month period] has been considered here merely for the purpose of bringing into clearer focus the conduct in issue [within the period]. Even without such consideration, however, the allegations of discrimination would have been found amply supported by such undisputed record facts as bear directly upon the layoffs. . . ."

events antedating the period in order to establish the violation.

Moreover, in the *Gaynor* case, a charge had actually been filed within three months of the execution of the agreement, and it was in reliance upon this timely filed charge that the Board in its decision had supported the complaint. 93 NLRB 299, 307-309.

Accordingly, neither principle nor precedent supports the Board in its conclusion that the maintenance in effect of an agreement valid on its face can be found to be an unfair labor practice in exclusive reliance upon alleged illegality in its inception antedating the filing and service of the charge by more than six months.²⁵

F. The Court Below Erroneously Invokes The Public Character Of The Statute And The Limited Scope Of Judicial Review To Support The Inapplicability Of The Limitations Provision of Section 10(b).

1. *Public Character of the Statute:* The court below states that, because of the more ramified interests with which the Taft-Hartley Act deals, "in interpreting, applying and administering a statute of limitations prescribed by Congress in this context, the Board—and the courts—are not confronted by precisely the same considerations as apply to statutes of limitations affecting the private rights of two individual litigants" (R. 474). This is novel doctrine. This Court was unimpressed with it in *Unexcelled Chemical Corp. v. United States*, 345 U.S. 59, 66. In that case, in holding that a complaint under the Walsh-Healey Act alleging the knowing employment of child labor was barred by limitations, this Court gave the statute of limitations a conventional construction, rejecting the countervailing argument that the conventional construction "will prejudice the power of the

²⁵ The Board majority argues that, if Section 10(b) operates as a bar, it "would permit an employer and a union to enter into an unlawful arrangement before a plant started operating which they could then enforce with impunity 6 months after executing the agreement" (R. 434). That is not this case, nor is the concern real. It has long been settled that fraudulent concealment or justifiable unawareness tolls the running of a statute of limitations. Note, *Developments In The Law, Statutes Of Limitations*, 63 Harv. L. Rev. 1178, 1217-1219, 1220-1224. Cf., *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. 231.

United States, to safeguard the public interest." *Id.* at 66. Congress was also unimpressed when it enacted Section 10(b). It described the mischief at which it aimed in the traditional terms of eliminating delayed litigation "after the records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused." H. Rep. No. 245, 80th Cong., 1st Sess., 40, in 1 Leg. Hist. 331. In its earlier enactment of the limitations riders upon the Board's appropriations, designed expressly to safeguard from invalidation union security agreements not the subject of a timely charge, Congress stressed "stabilization", the thought which is fundamental to repose (*supra*, p. 39). And the very shortness of the six-month period which Congress adopted demonstrates its dominating purpose to bring about speedy surcease to a controversy not made the subject of a prompt charge. When the court below states, with approval, that the "Board may have thought that the interests of self determination outweighed otherwise important considerations of burying stale disputes" (R. 475), it sanctions an administrative revision of the congressional judgment.

2. *Scope of Judicial Review*: The court below states that "Our scope of review is limited to determining . . . whether the Board has applied the statute in a 'just and reasoned manner.' *Gray v. Powell*, 314 U.S. 402, 414 (1941). Having in mind this limited scope of review, we are constrained to uphold the Board's conclusion" (R. 469).²⁶ To invoke this concept in

²⁶ Omitted from the quotation is the court's additional statement that review is also "limited to determining whether there is substantial evidence in the record as a whole to support the Board's findings of fact . . ." (R. 469). This is correct but irrelevant since petitioners did not contest the findings.

this case "is heresy." *Jaffe, Judicial Review: "Substantial Evidence On The Whole Record,"* 64 Harv. L. Rev. 1233, 1258 (1951). *Gray v. Powell* teaches that "Once the appropriate standards of relevance have been given by the courts, the agency is the sole body competent to apply those standards to a state of facts, whether agreed to or disputed." *Id.* at 1259. That is not this case. Here it is the meaning of the statute itself which must be determined in the light of its words, purpose, and history; and since it is the meaning of a statute of limitations in particular which is in issue, the subject by its nature is especially suited for independent judicial inquiry. Agency expertness not only does not contribute to the solution of this naked question of law but positively derogates from it. For the drive of the administrative mind is to regard a statute of limitations as an annoying impediment to the accomplishment of the agency's regulatory mission. It takes a mind schooled in a broader discipline to know, as Mr. Justice Holmes has stated, that "the principle [of repose] involved is as worthy of respect as any known to the law." *Doubar v. Providence and Boston R.R. Co.*, 181 Mass. 383, 385. In this context for the court below to say that it is "constrained" to uphold the Board's conclusion as "rational" (R. 470) and "not unreasonable" (R. 473) "suggests an abdication of the judicial function." *Jaffe, Judicial Review: Questions of Law*, 69 Harv. L. Rev. 239, 263 (1955).

II. THE BOARD'S ORDER IS OUTSIDE THE ALLOWABLE SCOPE OF ITS DISCRETION INsofar AS IT REQUIRES PETITIONERS TO REIMBURSE THE EMPLOYEES FOR THE UNION DUES AND INITIATION FEES REMITTED BY THE COMPANY TO PETITIONERS PURSUANT TO THE INDIVIDUAL CHECKOFF AUTHORIZATIONS OF EACH EMPLOYEE.

The Board's order, enforced by the court below (R. 478), requires that the union and the Company "shall jointly and severally reimburse the employees and the former employees of the Respondent Company whose initiation fees and/or dues in the Respondent Unions have been checked off pursuant to any agreement between the Respondents for the amounts deducted from the employees' earnings, beginning with the applicable 6-month period" (R. 442).

An order cannot stand if it is "not appropriate or adapted to the situation calling for redress and constitutes an abuse of the Board's discretionary power." *National Labor Relations Board v. District 50, United Mine Workers*, 355 U.S. 453, 463. While broad, the Board's "power is not limitless; it is contained by the requirement that the remedy shall be 'appropriate.' *Labor Board v. Bradford Dyeing Assn.*, 310 U.S. 318, and shall 'be adapted to the situation which calls for redress.' *Labor Board v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 348. The Board may not apply 'a remedy it has worked out on the basis of its experience, without regard to the circumstances which may make its application to a particular situation oppressive and therefore not calculated to effectuate a policy of the Act.' *Labor Board v. Seven-Up Bottling Co.*, 344 U.S. 344, 349." *Id.* at 458.

We now show that the refund order in this case is not a remedy that is rooted in a reasoned and reasonable expression of judgment. It is based on an in-

supportable premise; it disregards factors relevant to the judgment; and it is responsive to considerations which should be foreign to the judgment.

A. The Refund Order Is Based On The Premise That Payment Of Dues And Fees Must Be Presumed To Be Involuntary Because Of The Union Security Agreement.

The Board gave no explanation for its refund order other than to cite its earlier opinion in *Hibbard Dowel Co.*, 113 NLRB 28 (R 417, n. 100, 442, n. 23).²⁷ In that opinion the Board stated (113 NLRB at 30-31):

... the remedy of reimbursement of checked off dues is appropriate and necessary to expunge the illegal effects of the Respondents' unfair labor practices. . . . [T]he Respondent Company has given unlawful assistance and support to the Respondent Union which it has foisted on the employees as their bargaining representative in disregard of their statutory rights. Moreover, by their union-security agreement, implemented by a dues checkoff arrangement, the Respondents have unlawfully required the employees to maintain membership in the Respondent Union as the price of employment and thereby to support an organization not of their own choosing. In these circumstances, we find that it will effectuate the policies of the Act to order the Respondents jointly and severally to refund to the employees all dues deducted by the Respondent Company pursuant to checkoff authorizations for the benefit of Respondent Union.

Stripped to its essence the Board justifies the refund of checked-off dues and initiation fees solely because of the sanction of the underlying union security agree-

²⁷ The Board also cited *Charles W. Carter Co.*, 115 NLRB 251, but *Carter* did nothing more than to cite *Hibbard Dowel* also, 115 NLRB 263.

ment which it found to be invalid. The statement that the union was "foisted" on the employees is irrelevant because severance is effectively accomplished by other provisions of the order. Reimbursement is not necessary to "unfoisting." And the sanction of the union security agreement is relevant only upon the assumption that but for it dues and fees would not have been paid. At the heart of the Board's rationale, therefore, is the premise that dues and fees were involuntarily paid, and that since the involuntarism was rooted in an invalid agreement reimbursement is justified.

B. The Premise Is False That Payment Of Dues And Fees Is Involuntary Because Of A Union Security Agreement.

The premise that payment of dues and fees is involuntary, resulting solely from the sanction of a union security agreement, is fundamentally false. When the 1947 amendments to the Act were adopted, the proviso to Section 8(a)(3) was amended to provide that a union security agreement could only be valid "if, following the most recent election held as provided in Section 9(c) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement. . . ." This requirement was repealed on October 22, 1951 (Public Law 189, 82d Cong., 1st Sess.), it having proved "burdensome and unnecessary." *National Labor Relations Board v. Gaynor News Co.*, 197 F.2d 719, 724 (C.A. 2), affirmed, 347 U.S. 17. Its pointlessness was manifest from the results of the union-shop authorization polls conducted by the Board. "During the 4 years and 2 months, from 1947 to 1951, in which a union-shop authorization poll was required by the act before a valid union-shop agreement could be made, the Board con-

ducted 46,119 such polls. Negotiation of union-shop agreements was authorized by vote of the employees in 44,795 of these polls. This was 97 percent of those conducted."²⁸ For the fiscal year ending June 30, 1951, of 1,335,683 valid votes cast in such referendums, 1,164,143, or 87.2% of the employees, voted in favor of the union shop.²⁹ The same was true of the preceding years. In 1950, of 900,866 valid votes, 89.4% favored the union shop;³⁰ in 1949, of 1,471,092 valid votes, 93.9% favored the union shop;³¹ in 1948, of 1,629,330 valid votes, 94.2% favored the union shop.³²

This overwhelming demonstration that employees voluntarily favor the adoption of union security agreements forever put the quietus to the notion that such agreements merely constitute a device to constrain the payment of dues and fees by an unwilling majority. These agreements operate compulsively only as to that small group known as "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union. . . . *Radio Officers' Union v. National Labor Relations Board*, 347 U.S. 17, 41. Such agreements are the means by which a majority of the employees can require a negligible minority to pay their own way. But that the vast majority willingly pays was demonstrated by their willing authorization of a contractual obligation to pay.

²⁸ N. L. R. B., Sixteenth Annual Report, p. 10 (1951).

²⁹ *Id.* at 306 (1951).

³⁰ N. L. R. B., Fifteenth Annual Report, p. 235 (1950).

³¹ N. L. R. B., Fourteenth Annual Report, p. 172 (1949).

³² N. L. R. B., Thirteenth Annual Report, p. 111 (1948).

There is no reason to suppose that the sentiment was different in the present case for the period to which the refund order is applicable. While the 1951 amendment repealed the requirement of a prior election to validate a union security agreement, it substituted in its stead the stipulation that a union security agreement may neither be executed nor enforced if "following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement." (Section 8(a)(3) proviso.) Thus the employees have it within their power to divest an agreement of its union security provision. No deauthorization petition was ever filed in this case, although it could have been at any time (*Andor Co., Inc.*, 119 NLRB 925), the only requirement for the conduct of an election being that the petition be supported "by 30 per centum of the employees in a bargaining unit covered by an agreement" containing a union security clause (Sec. 9(e)(1)). Not even 30 percent of the employees could be mustered to support an election looking toward rescission of the union security provision of the agreements.

This record demonstrates the extremes of the Board's assumption. The Board premises the invalidity of the union security agreement upon the single circumstance that less than half of 148 employees designated the IAM to represent them on August 10, 1954. Yet there were 350 employees in the unit about a year later, more than doubling the initial complement; and there were 480 employees in the unit on

November 21, 1955, more than tripling the initial complement (*supra*, pp. 7-8). Thus most of the employees were newly added after the original execution of the 1954 agreement. When they arrived on the scene they found nothing but the conventional manifestations of a typical bargaining relationship. There is no reason to suppose that they did not willingly embrace what they found, as is true in thousands of plants throughout the United States.

Nor can the Board appropriately invoke the concept that, since the IAM did not have majority support at the time of its acquisition of status as the representative, the future favor it gained among the employees bore the influence of the original taint and could not therefore be said to be altogether untrammelled.³³ This concept is appropriately confined to the situations to which it has been applied, namely, to support relief of an injunctive character.³⁴ An order requiring that an employer cease giving future effect to an agreement with an assisted union, withhold recognition until the union's majority status has been established by an election, and post notices of desistance from unfair labor practices simply wipes the slate clean. It sets the stage for a fresh start.

But it stretches the concept too thin to invoke it to support the refund of dues and fees. It is a far

³³ See *International Association of Machinists v. National Labor Relations Board*, 311 U.S. 72, 79, 81-82.

³⁴ It is noteworthy that in the case cited in the preceding note, although the employer entered into a closed shop agreement with a union which had no majority and which the employer actively assisted by unfair labor practices including discriminatory discharges, the order entered by the Board did not require the refund of fees and dues. *Serriek Corp.*, 8 NLRB 621, 652-655.

ery from a desistance order to a refund order, and the circumstance appropriate for injunctive relief are by no means necessarily adequate to justify a monetary recovery. The only justification for a refund order is to make an employee whole for that which was extracted from him. "Since only actual losses should be made good" (*Phelps Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 198), solid proof of exaction is indispensable. To return a voluntary payment is not to make the employee whole but to make him the beneficiary of a windfall. And so the law has long established the rule that damages are not recoverable unless they are "the certain result of the wrong," "definitely attributable to the wrong. . . ." *Storg Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 562: "Certainty in the fact of damage is essential." *Palmer v. Connecticut P. & L. Co.*, 311 U.S. 544, 561. See also, *Talon, Inc. v. Union Slide Fastener, Inc.*, 266 F.2d 731, 736-737 (C.A. 9). Accordingly, however appropriate it is to justify a cease-and-desist order as desirable to dispel whatever lingering effect of an unfair labor practice there may be, it will not do as justification for what is in essence an award of compensatory damages. No one "may properly seek to secure something from another without . . . demonstrating pecuniary loss springing from or consequent upon the unlawful act." *Beeple v. Thompson*, 138 F.2d 875, 881 (A. 7), cert. denied, 322 U.S. 73. To refund dues and fees to an employee, for which he has received services, without a solid showing that he involuntarily paid them, is not to make him whole but to unjustly enrich him.³⁵

³⁵ Nor will it do for the Board to say that we are invoking a rule of damages relevant to private injury but not germane to the public character of the rights created by the Act. The rule

In this case, there is no substantial warrant for the Board's assumption that the fees and dues were involuntarily paid. The mere existence of a union security agreement does not make them so, as experience has conclusively shown; and the employees here did not even attempt to invoke the available statutory opportunity to divest the agreement of its union security clause. And the speculative character of any actual constraint is especially apparent in view of the doubling and tripling of the initial complement of employees (*supra*, pp. 7-8); the expansion from one to two plants (*supra*, p. 6), the quick settling of the situation into a conventional bargaining relationship, and the probable and usual turnover of employees. There is in the circumstances no fair basis for the Board's adjudication of pecuniary liability on a mass basis.

C. The Refund Order Disregards The Services Received By The Employees; Requires One Group Of Employees To Pay For The Benefits Received By Another Group Of Employees; And Requires The Company To Return Moneys It Never Kept.

The emptiness of the Board's major premise is matched by its disregard of other cogent considerations. Employees voluntarily pay dues and fees because they know they cannot have the benefits of union representation without contributing to their cost. In this case, the employees received benefits, and it can hardly be doubted that costs were incurred.

The 1954 and 1955 agreements provided substantial benefits for the employees. The most dramatic mani-

has its most frequent application in antitrust litigation, and one would be hard put to say whether the antitrust laws or the National Labor Relations Act have a more distinctively public character. See *Radovich v. National Football League*, 352 U.S. 445, 453-454 and n. 10; *Rogers v. Douglas Tobacco Board of Trade, Inc.*, 266 F.2d 636, 644 (C.A. 5).

festation was the ten cents per hour wage increase obtained during the term of the 1954 agreement, and the 31 cents per hour during the term of the 1955 agreement (*supra*, pp. 5, 7). The wage increases did not exhaust the benefits conferred. No less important, if perhaps less tangible, are provisions like those regulating reporting and call-in time, the perquisites of seniority, protection against improper discharge (which exists only by virtue of agreement), and numerous other matters essential to an ordered and decent industrial way of life. Finally, and not the least of the benefits, is a procedure for grievance adjustment culminating in arbitration for handling grievances.

The negotiation and administration of an agreement costs money. Effective representation requires a full-time paid staff, at the international level at least if not also at the local level. Preparing and presenting a case in arbitration is not inexpensive; and arbitrators must be paid.

Dues and fees go towards defraying the cost. They do not repose in depositories accumulating compound interest. And they did not in this case: They paid for services. While the record does not show one way or another, it may safely be assumed that much of the moneys have been expended. To require the refund of dues and fees at this late date does not simply mean that the employees will have received the benefits of union representation without contributing to their cost. The moneys for reimbursement must come from somewhere; and insofar as the unions are concerned, they must come from the dues and fees paid by other employees in other plants. What reimbursement comes down to, therefore, is that the employees in this case will have the benefits they secured from union

representation paid for by the employees in other plants. We find it difficult to believe that this serves to effectuate any policy of the Act.

Furthermore, the refund of dues and fees not only disregards the cost of past services, it impairs the capacity of the union to render future services. To drain a union's treasury is, to the extent of the drain, to disable it from functioning as effectively in negotiating and administering future agreements. Should a strike be necessary to consummate a satisfactory settlement, the wherewithal to pay strike benefits and defray other costs may have been destroyed or prejudicially curtailed. In addition, aside from the negotiation and administration of an agreement, unions undertake to provide for their members many valuable benefits which are intraunion in character. Death or disability plans, mutual insurance, medical care, institutions for the aged and the infirm, and vacation facilities are among these.³⁶ To drain the union's treasury by requiring the refund of dues and fees may seriously jeopardize its ability to meet existing commitments and prudently to undertake additional benefit programs. This too does not serve to effectuate any policy of the Act.

As for the Company, upon which joint and several liability to refund the dues and fees is imposed, it simply acted as a conduit for the transmission of the funds. It deducted the moneys from the pay of the employees pursuant to their individual check-off authorizations. It never kept the moneys. It transmitted them to unions which were, as the Board found, neither sponsored nor dominated by the Company (R.

³⁶ See Barbash, *The Practice of Unionism*, 300-304 (1956).

413-414). To fix liability upon the Company is not to remedy the wrong but to punish the Company for its commission.

D. The Order Requires The Refund Of Checked-Off Dues and Fees Although The Check-Off Was Individually Authorized.

The lack of substantial warrant for the Board's order is also shown by the fact that it is only the fees and dues checked-off pursuant to the employee's individual authorization which is to be refunded. But if there is any merit to the Board's position, the fees and dues paid directly to the union, as well as those remitted by the employer pursuant to the check-off authorization, should be refunded. For if it is the sanction of the union security agreement which is important, that sanction exerts its influence in the one case as effectively as in the other. But if, as we must infer from the Board's order, it is the check-off authorization which is critical, it is plain that that authorization is the individual voluntary act of each employee. Nothing compels the check-off authorization; it serves the employee's convenience as well as the union's. In fact, Section 302(c)(4), Title III, Labor-Management Relations Act, 1947, expressly sanctions check-off upon the individual authorization of the employee. It permits "money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner."

Thus in requiring the refund of *checked-off* fees and dues, the Board's order identifies as critical the very act which indisputably flows from the employee's individual authorization. Moreover, it seriously affects the acceptability of a check-off arrangement to the employer and hence its utility to unions and employees. For the Board's order "might have a deterrent effect generally in respect to the check-off practice, since employers surely would hesitate to engage in the check-off practice for the benefit of organized labor groups if there should remain the possibility that the employer might find itself compelled to reimburse employees for sums which the employees have authorized the employer to check-off." *National Labor Relations Board v. J. Greenebaum Tanning Co.*, 110 F.2d 984, 988 (C.A. 7).³⁷

E. Virginia Electric And Power Company v. National Labor Relations Board Is Not Authority For The Board's Position: The Current Version Of The Refund Order Is An Unreasoned Extension And Misapplication Of Virginia Electric And Has A Plainly Punitive Purpose.

I. Virginia Electric And Power Company v. National Labor Relations Board.

The Board relies upon this Court's decision in *Virginia Electric and Power Co. v. National Labor Relations Board*, 319 U.S. 533. All this Court decided was that a refund order was within the Board's power and that the exercise of the power was within the Board's discretion in the particular circumstances of

³⁷ While this case was decided before this Court's decision in *Virginia Electric and Power Co. v. National Labor Relations Board*, 319 U.S. 533, we show hereafter that *Virginia Electric* did not impair the authority of the preceding cases in their application to circumstances different from those presented in *Virginia Electric* (*infra*, p. 84).

that case. But the circumstances of *Virginia Electric* are so different from those in this case as to furnish no fair support for the result reached here. Thus the ruling circumstance in *Virginia Electric*, which controlled the evaluation of every other factor, was "that the Company was responsible for the creation of the I. O. E. [the contracting union] by providing its initial impetus and direction and by contributing support during its critical formative period." 319 U.S. at 540. The company-dominated character of the contracting union is at the heart of *Virginia Electric*.³⁸ Even as to company-dominated unions the Court declined to lay down a blanket rule. Referring to eleven preceding decisions of five Courts of Appeals, which had declined to approve refund orders, the Court stated "We need not now examine the various situations that were before the Circuit Court of Appeals in the cases collected in Note 1, *ante*, or consider hypothetical possibilities. We decide only the case before us and sustain the power of the Board to order reimbursement in full under the circumstances here disclosed." 319 U.S. at 545.³⁹

Plainly the Court has laid down no blanket rule relieving the Board of its task of exercising a reasoned judgment. The ruling factor of domination present in *Virginia Electric* is absent here. In this case the Board expressly found that the unions were

³⁸ See, *National Labor Relations Board v. McLaughlin Bakeries Corp.*, 153 F.2d 420, 425 (C.A. 5); cf., *National Labor Relations Board v. Clinchfield Coal Corp.*, 145 F.2d 66, 73 (C.A. 4).

³⁹ Of the preceding cases, the most cogently reasoned are *Western Union Tel. Co. v. National Labor Relations Board*, 113 F.2d 992, 997-998 (C.A. 2), and *National Labor Relations Board v. J. Greenbaum Tanning Co.*, 110 F.2d 984, 988-989 (C.A. 7).

not sponsored or dominated by the Company (R. 413-414). It cannot be said here, as it was in *Virginia Electric*, that the union is the employer's "creature" (319 U.S. at 540), that the employer imposed upon the employees "the cost of maintaining an organization which he has dominated" (*id.* at 541), that the union had "an employer-dominated beginning" and the employer "seized upon" the union shop and check-off "to establish the . . . [union] firmly" (*id.* at 543), that the union is "a type of organization which Congress has characterized as detrimental to the interests of employees and provocative of industrial unrest" (*id.* at 544),⁴⁰ and that the moneys went "into the treasury of the Company's creature to accomplish purposes the Company evidently believed to be to its advantage" (*ibid.*). These are not the circumstances in this case and there are no substituting circumstances which the Board has convincingly appraised or which exist to support the refund order here.

2. The extension and misapplication of *Virginia Electric*.

After *Virginia Electric*, until recently, the Board's application of the refund remedy seems to have been sparing and circumspect. The Board utilized the order in cases of active and widespread support of a union by an employer which, although short of domination, was so serious as effectively to impair the union's independence. *E.g.*, *National Labor Relations Board v. Parker Brothers*, 209 F.2d 278 (C.A.

⁴⁰ The IAM is composed of 2,076 local unions with a membership of 949,683. Directory of National and International Labor Unions in the United States, 1957, Bull. No. 1222, U.S. Dep't. of Lab., Bur. Lab. Stat., 37 (1957).

5). Short of domination or its virtual equivalent, the Board entered a refund order in favor of specific employees found in their individual situations to have been coerced into paying fees and dues. *E.g., National Labor Relations Board v. Local 404*, 205 F.2d 99 (C.A. 1), enforcing 100 NLRB 801.⁴¹ The judicial attitude was not receptive to blanketing generality. "The validity of reimbursement orders necessarily depends upon the peculiar circumstances of each case." *National Labor Relations Board v. Adhesive Products Corp.*, 258 F.2d 403, 409 (C.A. 2). Refund orders were not upheld where based on generalizations which failed realistically to reflect the actual situation. *National Labor Relations Board v. McGough Bakeries Corp.*, 153 F.2d 420, 425 (C.A. 5); *National Labor Relations Board v. Shedd-Brown Mfg. Co.*, 213 F.2d 163, 170-171 (C.A. 7); *National Labor Relations Board v. Braswell Motor Freight Lines*, 213 F.2d 208 (C.A. 5).⁴²

The Board's sharp break with the past appears to have begun with *Hibbard Dyeing Co.*, 113 NLRB 28. There the Board seems to have founded a refund order solely on the contracting union's lack of majority

⁴¹ The refund order in *Local 404* ran in favor of 31 identified employees (205 F.2d at 102, 103; 100 NLRB 801, 803, 804-805). The union shop agreement in that case was invalidly applied to a unit of 65 employees (205 F.2d at 101; 100 NLRB at 806, 809). The refund order ran, not to all 65 employees, but only to 31 of them. Hence, compulsory membership pursuant to the union shop provision of the agreement was not the basis for the order. Instead, the explicit foundation for the order in favor of the 31 employees was that these particular employees joined "under protest" as the result of the coercion of "join up or else" threats and a sit-down strike (205 F.2d at 101, 102, n. 2; 100 NLRB at 809, 811, 812).

status at the time of its original entry into the union security agreement.

The Board took its next step in *Brown-Olds Plumbing and Heating Corp.*, 115 NLRB 594. There the representative status of the contracting union was undisputed, but the agreement it entered into provided for a closed shop, a form of union security in excess of the maximum permissible under the Act. The Board founded the refund order upon the closed shop feature of the agreement and disregarded the untrammelled character of the union's majority status. The Board's current version of the refund order has come to be known as the *Brown-Olds* remedy, the name being derived from this case.

The Board took a further step in *Los Angeles-Seattle Motor Express, Inc.*, 121 NLRB No. 205, 43 LRRM 1029, 1030, review pending and argument heard, C. A. D. C. No. 14, 794. The agreement in that case established a nondiscriminatory hiring hall and provided that the contracting employers were to hire casual employees solely through that hall. The majority status of the contracting union was undisputed, the union shop provision was completely legal, and that provision was in any event inapplicable to the casual employees in whose favor the refund order ran. The Board nevertheless entered a refund order and founded it upon the noninclusion in the agreement of three requirements that the Board had devised in *Mountain Pacific Chapter of the Associated General Contractors*, 119 NLRB 883, 897, remanded, 44 LRRM 2802 (C.A. 9):⁴²

⁴² The Court of Appeals for the Ninth Circuit stated in part that (44 LRRM at 2805): "The Board does decide that a hiring hall contract absent certain guaranties violated the Act. But,

... we would find ... [a hiring hall] agreement to be nondiscriminatory on its face, only if the agreement explicitly provided that:

(1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

(2) The employer retains the right to reject any job applicant referred by the union.

(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement.

The drastic reformulation of the circumstances thought appropriate for a refund order is thus evident. As the General Counsel of the "Board" has explained, what the Board has done "was to extend the broad reimbursement order, theretofore reserved for Section 8(a)(2) situations, to payments coerced under illegal union security or hiring arrangements with any unions even if not employer-dominated or supported." Address, June 27, 1958, 42 LRRM 101.

upon the principles controlling the precedents above cited, the ruling cannot be upheld. An agreement that the hiring of employees be done through particular union offices does not violate the Act 'absent evidence that the Union unlawfully discriminated in supplying the company with personnel.'

⁴³ All references in this brief to the General Counsel are to Jerome D. Fenton and to statements made by him during his term of office from March 4, 1957 to June 26, 1959.

102. The innovation in this case was to found the refund order solely upon the union security provision of the agreement and to have it run in favor of all the employees covered by the agreement at any time. In protesting this innovation, former Board member Peterson has stated in dissent that (*Brown-Olds Plumbing & Heating Corp.*, 115 NLRB 594, 605-606):

... that the contract constitutes an unlawful closed-shop agreement . . . [does not show] that the dues and assessments were coercively collected. As the cases cited by the majority show, the illegality of an assessment provision and the unlawful character of a dues requirement in a closed shop contract do not alone support a reimbursement remedy. These cases differ from the pre-Taft-Hartley cases involving Section 8(a)(2) of the Act in that the dominated-union cases involved checkoff by employers in favor of unions which were in effect instrumentalities of such employers. Thus, although collection of dues may be deemed in a sense tainted with illegality where there is a closed-shop contract, the Board has in such situations, unlike Section 8(a)(2) cases, insisted upon specific evidence of coercion or threats by the union aside from the import of the contract itself.

The mechanical character of the Board's current application of the refund order is evident from its very recent statement that "the existence of an unlawful [closed shop or hiring hall] contract is sufficient in and of itself to establish the element of coercion in the payment of monies by employees pursuant to the requirements of such a contract . . . whether or not proof of actual exaction of payment is established." *Local 138, International Union of Operating Engineers*, 123 NLRB No. 167, 44 LRRM 1138, 1139.

As we now show, the current version of the refund order has been deliberately devised to accomplish a punitive purpose, not a remedial objective.

3. The punitive purpose of the current version of the refund order.

It is demonstrable that the Board's present use of the refund order is part of an overall plan to coerce employers and unions into yielding to the Board's conception of a valid union security or hiring agreement and to penalize them for failing to acquiesce in the Board's command. The attribute of the order which lends it to punitive application is the staggering financial liability it entails. This can be quickly illustrated. Assume a local union with a membership of two thousand all covered by one agreement. Assume further a monthly dues rate of four dollars, giving the local a monthly income from dues of eight thousand dollars. A contested proceeding before the Board, from the filing of the charge through the enforcement of the order by a Court of Appeals, usually takes about three years. Since the liability to refund the dues begins to run from the date six months preceding the filing of the charge, an enforced refund order against a local union of two thousand members paying four dollars per month would require the repayment of 280,000 dollars. Nor does this take into account initiation fees received during the period.⁴⁴ And the liability is fantastically multiplied if the union is a party to a multi-employer contract. As the Board has said (*Local 138, International*

⁴⁴ In this case, although the unit of employees is a small one ranging in number from a low of 148 employees to a high of 480 employees (*supra*, pp. 7-8), the liability as of August 29, 1958, more than a year ago, was estimated at about \$45,000.

Union of Operating Engineers, 123 NLRB No. 167, 44 LRRM 1138, 1139):

In cases involving multi-employer contracts in which the contracting union and one or more employers are named respondent parties to the contract, the Union's liability for reimbursement of sums unlawfully exacted also shall extend to all employees covered under such contract found unlawful; each named employer respondent shall be liable jointly and severally with the Union for the reimbursement of sums paid by its own employees. Although a collective bargaining contract may extend to employees of more than one employer, the limitation upon the liability of a particular employer derives from the fact that an employer participates in a contract only to the extent its own employees are involved. On the other hand, a Union which maintains contractual relations with one or more employers participates to the full extent of the contract's coverage. Accordingly, it would seem reasonable and logical that a Union's liability for reimbursement extend to all employees of all employers unlawfully coerced by the Union's contract into paying monies to the Union.

It is therefore apparent that a union and an employer can resist yielding to the Board's conception of a valid agreement only at the risk of staggering financial loss should the Board prevail. This is the lever which the Board has deliberately exploited to coerce compliance with its version of a valid agreement. Thus, on February 7, 1958, the General Counsel of the Board wrote to the Building and Construction Trades Department, AFL-CIO, Associated General Contractors, and National Contractors Association, advising them "to correct" their hiring arrangements within three months under pain of ap-

plication of the *Brown-Olds* refund order if they did not (5 CCH Lab. Law Rep. *50,060):

As you know, the Board, commencing with the *Brown-Olds* case, 115 NLRB 594, has held that where illegal hiring arrangements exist, either pursuant to a contract or practice, the appropriate remedy, in addition to the usual remedial provisions, requires the reimbursement of all monies, including initiation fees, dues, permit fees, assessments, "dobies," and the like, collected pursuant to such arrangements. The purpose of the Board in applying the so-called *Brown-Olds* reimbursement remedy is to effectuate the policies of the Act by, among other things, prevailing upon employers and unions to correct their illegal hiring arrangements.

It would be preferable, of course, if the parties took it upon themselves to correct their illegal hiring arrangements, thereby achieving the same basic purpose sought by the Board but without the necessity of Board action. Such overall elimination of illegal hiring arrangements, by voluntary action, would not only help effectuate the purposes of the Act, but would clearly be an important step in the general public interest and in the furtherance of the fundamental rights of employees.

With this thought in mind, I would like to suggest that during a period of three months, commencing March 1, 1958, employers and unions, who are party to illegal hiring arrangements, vigorously undertake to correct such arrangements by bringing them into compliance with the provisions of the Labor Management Relations Act of 1947. If this is done, it may warrant the disposition, without full application of the *Brown-Olds* reimbursement remedy, of charges based upon illegal hiring arrangements which have been voluntarily conformed to the provi-

sions of the Act during the period prior to June 1, 1958. It will also warrant my recommending to the Board during such period a similar disposition of all cases currently pending or brought before the Board with respect to such illegal hiring arrangements. It is understood, however, that apart from the non-application of the *Brown-Olds* reimbursement remedy, all charges and cases relating to or arising out of illegal hiring arrangements must be processed in normal fashion although such arrangements may have been corrected during the period prior to June 1, 1958.

The Office of the General Counsel will be pleased to cooperate with employers and unions in this matter.

Thereafter, on April 1, 1958, the Board issued its decision in *Mountain Pacific Chapter of the Associated General Contractors*, 119 NLRB 883, remanded 44 LRRM 2802 (C.A. 9), in which it formulated the three requirements for inclusion in agreements established hiring halls (*supra*, pp 87-88). Significantly, the order in *Mountain Pacific* did *not* require the refund of dues and fees, thus showing that as of a year and one-half ago at this writing the Board did not deem reimbursement essential to an effective remedy in this situation. Nevertheless, on April 23, 1958, three weeks after *Mountain Pacific* had issued, the General Counsel wrote another letter, this time to the Associated General Contractors, National Contractors Association, and National Electric Contractors Association, extending the moratorium for application of the *Brown-Olds* remedy from June 1, 1958 to September 1, 1958, and advertng to the establishment in *Mountain Pacific* of "certain legal require-

ments for exclusive hiring arrangements" (5 CCH Lab. Law Rep. ¶ 50,074):

On February 7, 1958, this Agency announced that during the period March 1 to June 1, 1958, it would withhold full application of the *Brown-Olds* reimbursement remedy where employers and unions voluntarily bring their union-security and hiring arrangements into conformity with the provisions of the Labor Management Relations Act, 1947.

Since then we have been advised that a number of unions and employers are vigorously undertaking to bring their union-security and hiring arrangements into conformity with the Act. We have been further advised that unions and employers are also reviewing such arrangements in light of the Board's decision in *Mountain Pacific Chapter of the Associated General Contractors, Inc.* (119 NLRB No. 126-A, released April 1, 1958), which established certain legal requirements for exclusive hiring arrangements.

In view of these circumstances, a further extension of time beyond June 1, 1958, is warranted so that the parties may have sufficient opportunity to complete their negotiations in an orderly and informed manner. We have therefore extended to September 1, 1958, the period during which this Agency will withhold full application of the *Brown-Olds* reimbursement remedy where the parties voluntarily and diligently correct their union-security and hiring arrangements.

Thereafter, on August 19, 1958, the General Counsel wrote to the Building Trades Employers and Unions advising that, while there would be no general extension of the moratorium beyond September 1, 1958, the *Brown-Olds* remedy might be withheld if

compliance were achieved by November 1, 1958, by those employers and unions currently engaged in "genuine efforts" in that direction (5 CCH Lab. Law Rep. ¶ 50,104):

On February 7, 1958, this Agency announced that during the period from March 1 to June 1, 1958, it would withhold full application of the *Brown-Olds* reimbursement remedy where employers and unions voluntarily bring their union-security and hiring arrangements into conformity with the provisions of the Labor Management Relations Act of 1947, as amended. On April 23, 1958, the period during which this announced policy would apply was extended to September 1, 1958. This extension was based, in part, on the vigorous undertaking by a large number of unions and employers to comply with the above policy and on the desire to provide the parties with a sufficient opportunity to review their agreements in light of the Board's decision in *Mountain Pacific Chapter of the Associated General Contractors, Inc.*, (F19 NLRB No. 126-A, released April 1, 1958, which established certain legal requirements for exclusive hiring arrangements), and to complete their negotiations in an orderly and informed manner.

In supplementation of the foregoing and, in accord with our announced desire to cooperate with and to assist the parties in whatever way possible in this matter, the Office of the General Counsel recently issued a statement with regard to union hiring halls and referral systems in which comment was made on various questions which had been raised by unions, employers and other interested parties as to the scope and implications of the Board's *Mountain Pacific* decision.

Since the issuance of that statement we have received numerous communications which demon-

strate that many employers and unions are still in the process of renegotiating their agreements in an attempt voluntarily to conform such agreements with the Act but, that due to unavoidable delays inherent in such negotiations, and the complex problems involved, appropriate new agreements, in many instances, will not be executed by September 1,

Under all the circumstances, we have determined that no general extension of the policy of withholding the full application of the *Brown-Olds* remedy beyond September 1 is warranted. However, where the parties have initiated steps and have made genuine efforts to correct their union security and hiring arrangements prior to the September 1 deadline, the full application of the remedy may be withheld provided that conformity with the Act is achieved by November 1, 1958.

You may be assured of our continued cooperation with your efforts to conform your union security and hiring arrangements to the requirements of the Act.

Then, on October 31, 1958, one day before the expiration of the November 1 deadline, the Board entered its refund order in *Los Angeles-Seattle Motor Express, Inc.*, 121 NLRB No. 205, 43 LRRM 1029, 1030, review pending and argument heard, C. A. D. C. No. 14,794, the first time that such an order had been based upon the invalidation of a hiring hall agreement because of the omission of the three requirements from it (*supra*, pp. 87-88). The Board thus gave point to its General Counsel's threat that, if compliance were not effectuated during the moratorium, the penalty would be imposition of the *Brown-Olds* remedy. As the General Counsel stated in an address at the 1959 Southeast Trade Exposition on March 21, 1959, "It was not

until the eve of the November 1 deadline that the Board, in the *Los Angeles-Seattle Motors* case, linked *Mountain Pacific* to the *Brown-Olds* rationale" (mimeo. copy, p. 6). He stated in the same address that "The subsequent history of the *Mountain Pacific* decision has been, in large part, a concerted program by this Agency to encourage appropriate affirmative action by the contracting parties to conform their collective agreements and hiring practices to the requirements of *Mountain Pacific*. In this respect, the major spur has been the so-called *Brown-Olds* remedy . . ." (*id.* at p. 5). The spur was identified as "imposing a liability which may involve substantial sums of money" (*id.* at p. 7), and, he stated, "deterrence is the underlying consideration" (*id.* at p. 8). He described the moratorium as the period of "reprieve" (*id.* at p. 6).

This theme has been emphasized by the General Counsel in repeated speeches. In an address to the Building Industry Employees of New York State on June 27, 1958, he stated: "The purpose of the Board in fashioning the *Brown-Olds* reimbursement remedy is to effectuate the policies of the Act by prevailing upon employers and unions to correct their illegal union-security arrangements" (42 LRRM 101, 103). In an address to the Illinois State Bar Association on November 7, 1958, he referred to the *Brown-Olds* remedy as "the first time employers and unions were to be held liable in a monetary sense for illegal union security or hiring arrangements. This liability potentially involves substantial sums of money . . ." (mimeo. copy, p. 4).

But the frankest avowal of the coercive and punitive character of the *Brown-Olds* remedy was given by the

General Counsel in an address to the Rutgers University Conference on September 30, 1958. He stated that the "use that has been made of this extraordinary remedy . . . demonstrates vividly the capabilities of administrative pressure and persuasion . . ." (mimeo. copy, p. 6). He observed that "if employers and unions are to avoid serious consequences, these illegal arrangements must be eliminated. Liability potentially involves substantial sums of money . . ." (*id.* at p. 7). He stated that, as the parties became aware of the "serious monetary risk" they ran, they undertook to conform their agreements to the Board's requirement, and during this time "over the heads of the parties hung this statutory sword of Damocles—the constant awareness that *Brown-Olds* would be applied in full" (*ibid.*). He concluded that, in withholding the refund remedy during the period of the moratorium and threatening to impose it thereafter, "we paid heed to the homely adage of one of our very own citizens, who practiced what he preached at the turn of this twentieth century. I refer to President 'Teddy' Roosevelt. He carried a 'big stick' and with it he went far. We spoke softly and carried a 'big sword,' and the results to date have been heartening" (*id.* at p. 8).

These sentiments were echoed by Board Member John H. Fanning who, in referring to the current application of the refund order, stated that the Board "put teeth into the law . . ." ⁴⁵ He later referred to it as the "stinger." ⁴⁶ Board Member Joseph A. Jenkins

⁴⁵ Address to the American Society for Personnel Administration at Jacksonville, Florida, February 6, 1959, p. 8.

⁴⁶ Address, Union Shops and Hiring Halls, The Third Yale Law School Alumni Day, April 25, 1959, p. 15.

reported that the Board "decided that the law must be observed and a remedy provided which would cause compliance therewith. * * * [It] thereafter applied to unions and companies the *Brown-Olds* reimbursement remedy, in order to interest companies and unions in the problem of observing the law."⁴⁷ And he later repeated that:⁴⁸

... in order that the construction industry and the unions affected thereby would pay some attention to what the Labor Board was saying we devised what is known as the *Brown-Olds* remedy.

The theory behind the *Brown-Olds* remedy is that we'll indicate to people that in the event they do not comply with the laws enunciated by Congress, we will require the refund of dues and assessments illegally exacted.

It is patent that the Board is exercising punitive power, although its "power to command affirmative action is remedial, not punitive." *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 236. It is patent that the Board is imposing a penalty to coerce compliance, but the "Act does not prescribe penalties or fines." *Republic Steel Corp. v. National Labor Relations Board*, 311 U.S. 7, 10. And when the General Counsel states, as he does, that "deterrence is the underlying consideration" (*supra*, p. 97), it suffices to say, with this Court, that "it is not enough to justify the Board's requirements to say they would have the effect of deterring persons from violating the Act. That argument proves too

⁴⁷ Address to the Contracting Plasterers and Lathers International Association, Washington, D. C., June 3, 1959, 44 LRR 135, 136.

⁴⁸ Address to the Building Industry Employers of New York State, Lake Placid, New York, June 27, 1959, p. 9.

much, for if such a deterring effect is sufficient to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end." *Republic Steel Corp. v. National Labor Relations Board*, 311 U.S. 7, 12. The Board has not only failed to take "fair account . . . of every socially desirable factor in the final judgment" (*Phelps Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 198), it has in fact entered the refund order in reliance upon factors which should be alien to the judgment.

CONCLUSION

For the reasons stated, the judgment should be reversed and the case remanded to the Court of Appeals with directions to set aside the Board's order.

Respectfully submitted,

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September 1959.

APPENDIX A

The evolution of the limitations rider of the 1948 NLRB Appropriation Act is as follows:

1. On March 21, 1947, The House Appropriations Committee reported H.R. 2700 (H. Rep. No. 178, 80th Cong., 1st Sess.), which reads in pertinent part as follows:

UNION CALENDAR No. 76
80th Congress, 1st Session
H. R. 2700
[Report No. 178]

IN THE HOUSE OF REPRESENTATIVES

March 21, 1947

MR. KEEFE, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

Making appropriations for the Department of Labor, the Federal Security Agency, and related independent agencies, for the fiscal year ending June 30, 1948, and for other purposes.

TITLE III—NATIONAL LABOR RELATIONS BOARD

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof *between management and labor* which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant: *Provided, That here-*

after, notice of such agreement or a renewal thereof shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person: *Provided further*, That these limitations shall not apply to agreements with labor organizations formed in violation of section 158, paragraph 2, title 29, United States Code: * * * [Emphasis supplied.]

This title may be cited as the "National Labor Relations Board Appropriation Act, 1948".

2. On March 26, 1947, five days later, with the limitations rider on the NLRB appropriations identical to the foregoing, H.R. 2700 was twice read and referred to the Senate Appropriations Committee:

H. R. 2700
80th Congress, 1st Session

IN THE SENATE OF THE UNITED STATES
March 26 (legislative day, March 24) 1947
Read twice and referred to the Committee on
Appropriations

AN ACT

Making appropriations for the Department of Labor, the Federal Security Agency, and related independent agencies, for the fiscal year ending June 30, 1948, and for other purposes.

TITLE III—NATIONAL LABOR RELATIONS BOARD

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case

arising over an agreement, or a renewal thereof, *between management and labor*, which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant: *Provided, That*, hereafter, notice of such agreement or a renewal thereof shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person: *Provided further*, That these limitations shall not apply to agreements ~~with~~ labor organizations formed in violation of section 158, paragraph 2, title 29, United States Code; * * * [Emphasis supplied.]

This title may be cited as the "National Labor Relations Board Appropriation Act, 1948."

3. On April 17, 1947, 22 days later, the Senate Labor Committee, in its report accompanying S. 1126, explained, concerning the proposed six-month limitations amendment to Section 10(b) of the National Labor Relations Act, that (S. Rep. No. 105, 80th Cong., 1st Sess., 26):

Section 10(b): The principal substantive change in this section is a provision for a 6-month period of limitations upon the filing of charges. The Board itself by adopting a doctrine of laches has to some extent discouraged dilatory filing of charges, and a rider to the *current appropriations bill* (which if this amendment was adopted would no longer be necessary) contains a 3-month period of limitations with respect to certain kinds of unfair labor practices. [Emphasis supplied.]

4. On April 28, 1947, 11 days later, the Senate Appropriations Committee reported H. R. 2700, and it was then for the first time that the limitations rider on the NLRB appropriations was changed by striking the words "management and labor" and substituting the words "an employer and a labor organization which represents a ma-

jority of his employees in their appropriate bargaining unit" (S. Rep. No. 146, 80th Cong., 1st Sess., 13):

CALENDAR NO. 147

80th Congress, 1st Session

H. R. 2700

[Report No. 146]

IN THE SENATE OF THE UNITED STATES

March 26 (legislative day, March 24), 1947

Read twice and referred to the Committee on
Appropriations

April 28 (legislative day, April 21), 1947

Reported by Mr. Knowland, with Amendments

[Omit the part struck through and insert the part printed in *italic*]

AN ACT

Making Appropriations for the Department of Labor, the Federal Security Agency, and related independent agencies, for the fiscal year ending June 30, 1948, and for other purposes.

TITLE III—NATIONAL LABOR RELATIONS BOARD

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between an employer and a labor organization which represents a majority of his employees in their appropriate bargaining unit, which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant: *Provided*, That, hereafter, notice of such agreement or a renewal thereof shall have been posted in the plant affected for said period of three

months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person: *Provided further*, That these limitations shall not apply to agreements with labor organizations formed in violation of section 158, paragraph 2, title 29, United States Code: * * * [Striking and emphasis in original.]

This title may be cited as the "National Labor Relations Board Appropriation Act, 1948".

5. On May 5, 1947, seven days later, the House ordered H. R. 2700 to be printed, including the foregoing Senate change in the limitations rider on the NLRB appropriations.

6. The NLRB Appropriation Act, 1948, was passed on July 28, 1957, 35 days after the Taft-Hartley amendments were enacted on June 23, 1947, but 25 days before they became effective on August 22, 1947, and included the foregoing change.

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 *et seq.*), are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. (8) (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; [and (ii) if, following the most recent election held as provided in section 9 (c) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:] *and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h), and (ii) unless following an election held as provided in section 9 (c) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement:* *Provided fur-*

¹ The matter in brackets was repealed, and the matter in italics was added, by Public Law 189, 82d Cong., 1st Sess., October 22, 1951.

ther. That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . .

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)

(3) . . .

[Sec. 9] (c) [(1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organiza-

tion made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.]

(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.²

[Sec. 10] (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

[Sec. 10, (c)] * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is

² See preceding note.

engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

[Sec. 10] (f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

Sec. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed

prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

• • • • •
Sec. 104. The amendment made by this title shall take effect sixty days after the date of enactment of this Act. • • •

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MADE BY THE SUPREME COURT

No. 44

3rd Supreme Court of the United States

October Term, 1958

**LOCAL LABOR No. 1434, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, INTERNATIONAL ASSOCIATION
OF MACHINISTS, AFL-CIO, AND BUREAU MANU-
FACTURING COMPANY, PETITIONERS**

NATIONAL LABOR RELATIONS BOARD

**ON WRIT OF HABEAS CORPUS OF THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WRIT FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 44

**LOCAL LODGE No. 1424, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO; INTERNATIONAL ASSOCIA-
TION OF MACHINISTS, AFL-CIO, AND BRYAN MANU-
FACTURING COMPANY, PETITIONERS**

v.

NATIONAL LABOR RELATIONS BOARD

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (R. 466-477) is reported at 264 F. 2d 575. The decision and order of the National Labor Relations Board (R. 428-457) is reported at 119 NLRB 502.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 1959 (R. 478-479). The petition for a writ of certiorari was filed on March 18, 1959, and granted on June 22, 1959 (R. 479, 360 U.S. 916). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 49-51.

QUESTIONS PRESENTED

More than six months prior to the filing and service of the charges in this case, the Company and the Union entered into a union security agreement which required employees to join the Union as a condition of employment. The agreement was executed when the Union did not represent a majority of the employees. The Board found that the enforcement of the agreement within the six-month period constituted an unfair labor practice since the Union was not, as the statute requires, the bargaining representative of the employees when it entered into the agreement.

The questions presented are:

1. Whether Section 10(b) of the Act (which precludes issuance of a complaint based upon any unfair labor practice occurring more than six months prior to the filing and service of the charges) bars the Board from taking into consideration the non-representative status of the Union when it entered into the agreement, for the purpose of determining whether enforcement of the agreement within six months of the filing and service of the charges constituted an unfair labor practice.

2. Whether the Board's order requiring the Company and the Union to reimburse the employees for dues and initiation fees checked off pursuant to the contract was valid and proper.

STATEMENT

I. THE BOARD'S FINDING OF FACT

Briefly, the Board found that the IAM violated Section 8 (b)(2) and (1)(A) and the Company¹ violated Section 8(a) (1), (2), and (3) of the Act, by maintaining and enforcing an agreement containing a union security clause, which was executed at a time when the IAM did not represent a majority of the employees in the unit. The Board also found like violations based on the execution and maintenance of a 1955 agreement, holding that such contract was merely an extension of the original illegal agreement (R. 437). The Board based its findings upon the following subsidiary facts:

A. EVENTS SURROUNDING THE EXECUTION OF THE 1954 AGREEMENT
BETWEEN IAM AND THE COMPANY

1. *The Company accepts the IAM claim of majority representation, without question as to its validity, and decides to recognize that union in July 1954*

In July 1954, Leslie Westbrook, then plant manager of the Company's Reading Plant (R. 354; 28),² received a letter dated July 17, 1954, from IAM representative E. L. Schwartzmiller, and bearing the subject designation "Union Recognition." Without indicating the existence of any proof thereof, the letter

¹ Bryan Manufacturing Company is an Ohio corporation engaged in manufacturing electrical products at several plants in Ohio, Indiana, and Michigan. The two plants here involved are located in Reading and Hillsdale, Michigan.

² References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

asserted that the IAM represented a majority of the "production and maintenance" employees of the plant, and requested an early meeting with the Company for purposes of negotiating a collective bargaining agreement (R. 356-357; 17, 324). The IAM did not, in fact, represent a single employee in the plant. After receiving the letter, on or about July 19, 1954, Westbrook telephoned company counsel Walter F. Probst, for advice. Probst stated that he "would advise recognizing them because he had been doing business with them in other plants" including plants in San Diego, California, Lancaster, Ohio, and Zanesville, Ohio. He stated further that he had found in his dealings with the IAM that whenever a company had "contested," the IAM had "won out," that he found them "fair to work with," that he was dealing with them at the time in Lancaster, that he thought that they "could get along" and that they "might as well go ahead and have the meeting with them." Without mentioning the possibility of a Board election or other means of ascertaining whether the IAM actually represented a majority, Probst indicated that if the Company did not "go ahead and arrange for a meeting," the Company would "get beaten in the end." He then asked Westbrook to mail the letter to him (R. 357-358; 29, 46-47, 59).

Approximately a week after this telephone conversation, Westbrook and Company Vice-President Adams met with Probst in Detroit at which time they decided to recognize the IAM. The three Company officials discussed some tentative contract provisions and arranged for a meeting with IAM representative

Schwartzmiller for August 10 in Lancaster, Ohio (R. 358; 48-49). At no time after receipt of the IAM letter did Westbrook raise any question as to whether Schwartzmiller had any authorization cards from the employees, or raise any other question concerning Schwartzmiller's claim of majority representation. He accepted this claim "on the strength of what" Probst had told him (R. 358; 59-60).

2. The IAM and the Company negotiate a basic agreement on August 10, 1954, which the Company signs

On Tuesday, August 10, 1954, Westbrook, accompanied by Company attorneys Probst and Galucci, met with Schwartzmiller in Lancaster, Ohio, as had been arranged, to negotiate an agreement (R. 358; 16-17, 30-32). By the end of the meeting, agreement had been reached on the basic terms of a contract. This was to be typed up for final approval and signature, subject only to minor corrections. Westbrook understood, however, that the agreement was to have the approval of the employees (R. 359-360; 49-50, 51). Opening with a prefatory paragraph stating that the agreement was "made and entered into the 10th day of August 1954," between the Company and the IAM, the basic agreement covers some 11 pages and consists of 22 articles of the type customarily included in collective bargaining agreements. Two of the articles, however, one entitled "WAGES" and the other "SENIORITY," specify that the provisions for each of these items shall be subsequently agreed upon and incorporated into the basic agreement as

Exhibit A and Exhibit B respectively (R. 349; 283-284, 289, 291).

Article I which is entitled "RECOGNITION" and is a part of the basic agreement, provides that the Company will recognize the IAM "as the sole and exclusive bargaining agency for all the employees within the bargaining unit" and that the "Company will bargain collectively with the Union with respect to rates of pay, wages, hours and other conditions pertaining to employment for all of the employees in the unit" (R. 350; 284). Article II of the basic agreement, entitled "CHECKOFF," provides that upon receipt of "a signed authorization of the employee involved," the Company shall deduct from his last paycheck each month "the initiation fee and dues payable by him" to the International during the period provided for in the authorization (R. 351; 284). Article III of the basic agreement, entitled "UNION SHOP" provides that, "As a condition of employment, all employees covered by this agreement shall, forty-five (45) days after the date of execution of this agreement, or in the case of new employees forty-five (45) days after the date of hiring, become members of the Union, and remain members in good standing in the Union, during the term of this agreement" (R. 351; 284-285). The basic agreement also provided that it "shall be in full force and effect from August 10, 1954 to August 10, 1956 and shall automatically remain in full force from year to year thereafter," in the absence of written notice of desire to amend or modify given not less than 60 days prior to the agreement's expiration date (R. 352; 296-297).

Further, no alteration, variation, waiver, or modification of the basic agreement is to be "binding upon the parties hereto unless such agreement is made and executed in writing between the parties hereto" (R. 351-352; 296-297).

After the August 10 meeting, Probst had the agreement typed, and mailed it to Westbrook who received it "around the 12th or 13th" of August (R. 359; 50). Vice-President Adams then signed it for the Company, and Schwartzmiller signed at a later date for the IAM under circumstances hereinafter described (R. 359; 16, 21, 23-24, 26, 36, 50-51, 60-61, 62).

3. *The IAM first appears at the Company's Reading plant on August 16, 1954, and a "Temporary Bargaining Committee" is formed to sign the wage supplement to the contract*

While for about a month prior thereto the United Auto Workers had been organizing employees at the Reading plant,³ it was not until August 16, 1954, i.e., after completion of negotiations of the aforementioned basic agreement and its execution by the Company, that the IAM made its first appearance at the plant. On this date, Union representative Schwartzmiller came to the plant, and had his first meeting with the "Temporary Bargaining Committee" which was made up of nine employees on the first shift and five employees on the second shift.⁴ Membership on

³ During the summer of 1954, employees had held several meetings on behalf of UAW at the home of an employee, and a number of UAW authorization cards had been signed (R. 362; 75-76, 95-96, 109-110, 258, 260).

⁴ There were approximately 150 employees then working at the plant, some 100 of them working on the first shift and 50 on the second shift (R. 365; 187-188, G.C. Exh. 4).

this Committee was not based on any interest in the IAM. On the contrary, Plant Superintendent McFann selected the members at random, having gone through the time cards to try "to get a girl from each department" (R. 364-366, 368; 37-38, 149-150, 152-153, 207, 237). At least some of the members serving on the Committee had never before heard of the IAM at the plant (R. 368-369; 149-150, 152, 207).

The employees selected for the "Temporary Bargaining Committee" were given no advance notification thereof, but were simply called from their respective shifts on August 16, and told to report to Westbrook's office (R. 368; 37, 150-152). When the five employees representing the second shift reported, Westbrook introduced them to Schwartzmiller, and identified him as representing the IAM (R. 366; 150-151, 153). Schwartzmiller then explained to the group that the IAM had an agreement with the Company as of August 10 which would be to the employees' advantage (R. 366; 167-168, 208, 210-212). He mentioned their "getting a raise" and stated that there were parts of the agreement which "could be changed or altered in the future." Most of the remaining time was spent by him in reading parts of the contract (R. 366; 151-152, 212). Prior to the end of the meeting, which lasted approximately 45 minutes to an hour, Schwartzmiller passed out membership cards and told the group that as long as they were in there, they "might just as well be the first to sign the cards." All five employees then signed them (R. 366; 155-156, 208-209). Before dismissing the employees from the meeting, Schwartzmiller also

stated that there would be some papers for them to sign later in connection with the agreement (R. 366-367, 158).

Some thirteen employees testified that prior to August 16, 1954, when the "Temporary Bargaining Committee" met with IAM Representative Schwartzmiller, they had seen no IAM posters or circulars around the plant, they had never been asked to sign and had never signed any authorization or applications for membership, they had never been approached by anyone on behalf of IAM, and they had no knowledge of any discussions among employees at the plant relating to the IAM. The stipulated testimony of an additional 13 employees was to the effect that "the first time" they knew a union had come into the plant was on August 16, after Schwartzmiller's meeting with the second shift employees who had been chosen to serve on the "Temporary Bargaining Committee." Prior to that time, they too had never been approached by any representative of the IAM, or by any employee on its behalf, and had never seen any IAM posters, literature, or circulars (R. 362-365; 67-68, 69-70, 72-73, 79-80, 111-112, 123-124, 127, 135-136, 149-150, 200-202, 209, 231-232, 241-242, 245-246). After the meeting of the "Temporary Bargaining Committee," however, when members of the Committee returned to their jobs, word spread among the other employees about the purpose of the meeting (R. 366; 76-77, 128-129, 137-138, 200-201, 210-211, 241-242). Accordingly, when Plant Superintendent McFann appeared not long afterwards, "quite a few girls gathered around" and questioned him as to how the

selection of employees for the Committee had been made. McFann told them the Committee had been "chosen at random" (R. 366; 152-153, 157).

On Tuesday, August 17, the 14 employees forming the "Temporary Bargaining Committee" were again called into Westbrook's office, and this time signed Exhibit A to the contract, the wage supplement (R. 359-360; 40-41, 42, 158-160, 214-215, 216-218). Vice-President Adams and Schwartzmiller also signed the wage supplement (R. 359-360; 52-53).⁵ Exhibit A provided for specified wage rates to be effective retroactively to August 10, with a 5 cents per hour increase for all employees, and a further 5-cent increase in December 1954. The wage rates were to remain in effect until August 10, 1955, when "hourly wage rates only" could be reopened upon 60 days written notice (R. 352-353; 299-300). The "Temporary Bargaining Committee" actually signed the contract at mid-afternoon on Tuesday, August 17, without prior vote of approval by Reading plant employees. Although the employees of the two shifts held mass meetings on that date, the meetings occurred after all signatures had been affixed to the basic agreement with its wage supplement (R. 359-360; 77-78, 81-82, 129-130, 143, 202, 221-223, 224-225, 227, 237-238, 252). Moreover, Schwartzmiller devoted both meetings simply to familiarizing the employees with the agreement that had been signed, and to electing committeemen from the respective shifts. No vote was taken at either of

⁵ While Schwartzmiller also signed the basic agreement at this time, Adams, as noted *supra*, p. 7, had already signed this document on behalf of the Company.

the two meetings to approve the contract, or any of its provisions (R. 360-362; 71, 73-74, 81-82, 113-114, 129-130, 132, 139-140, 229, 230-231, 235, 237-240).

On August 18, committeemen elected from each of the shifts replaced members of the "Temporary Bargaining Committee," and negotiations commenced for the seniority provisions of the contract which, as noted *supra*, pp. 5-6, were to be included as Exhibit B. Agreement was reached on this phase of the contract on September 2, 1954, when Exhibit B was signed. The provisions on seniority thus constituted the only part of the 1954 agreement which committeemen elected by employees played any part in negotiating (R. 360-363; 24-25, 41-42, 118, 119-121, 248-255).

After the appearance of the IAM at the Reading plant on August 16, Schwartzmiller was confronted on a number of occasions with the question how the IAM had come into the plant. The first of these occasions occurred in the plant on the evening of August 16 when Schwartzmiller talked with Ruth Moses, an employee who had been interested in the UAW, and who had only shortly before learned of the IAM after the second-shift employees on the Temporary Bargaining Committee had returned from Westbrook's office. Schwartzmiller approached Moses at her machine, introduced himself as a representative of the IAM, and said that he understood Moses was not exactly pleased with the Union. Moses answered that "it was merely the way they had come in" which she questioned. Schwartzmiller explained that the IAM had been organizing another company interrelated

economically with Bryan, that "the company had agreed to let" the IAM come into the Reading plant, and that the IAM "came immediately, rather than try to organize in the usual way, because they figured they would come while the company was in the mood" (R. 371-373; 78-79, 85-87).

The second incident occurred on the afternoon of August 17, after the meeting of Schwartzmiller with the first shift employees. As Schwartzmiller was leaving the meeting hall, some officers of Local 701, UAW, introduced themselves and asked what was going on. Schwartzmiller told them that he had a contract with Bryan. In the ensuing discussion Schwartzmiller was asked if he did not know that the two unions had a "non-raiding agreement," and someone in the group accused him "of coming in the back door." Schwartzmiller neither denied nor confirmed the accusation, but when asked how he "got away with it," replied that it depended on whom you knew and that "if you can get away with it, you just get away with it." Schwartzmiller also told the group that he had just negotiated a contract with some other plant in Ohio (R. 372-374; 89-91, 93, 95-96, 98-99).

That night, during the meeting with employees from the second shift, Ruth Moses queried Schwartzmiller again, this time publicly, as to how the IAM had come into the plant and obtained a contract with the Company. Schwartzmiller made no claim that the employees had designated the IAM as their bargaining representative, but stated that he had been warned that an attempt would be made to break up

the meeting (R. 374; 69, 70-71, 80-81, 85, 114-115, 117-118, 130, 138-139, 202, 248).

Finally, at a meeting of the Executive Committee of the IAM Local Lodge during the summer of 1955, when there was still discussion among employees as to whether the IAM had properly come into the plant, Schwartzmiller explained that the IAM had been on strike at Essex Wire, a company in Lancaster, Ohio, that they had that company, which was "connected" with Bryan, "over a barrel," and that they had secured their contract at the Reading plant because "they told them that they would have to let them come in up here" (R. 375-379; 100-105).

B. THE AUGUST 30, 1955, AGREEMENT

During the summer of 1955, Schwartzmiller and Carl Cederquist, a Grand Lodge Representative of the IAM, initiated further negotiations with the Company by requesting a wage reopening under the wage supplement agreement of the 1954 contract, which provided that "hourly wage rates only" could be reopened on 60 days written notice given prior to August 10, 1955 (R. 391-392; 178-179, 299-300). Several bargaining conferences were held with the Company during the latter part of August 1955, in which Schwartzmiller and Cederquist participated, as well as representatives of the Local Lodge (R. 391-393; 172-181).

Schwartzmiller and Cederquist were also present at meetings of the Local Lodge held during the period of the negotiations (R. 391-392; 203-204). As a result of the bargaining sessions, a 3-year agreement

dated August 30, 1955, was entered into, and signed by 6 employees for the Local Lodge, as well as by Cederquist. Plant Manager McFann signed for the Company (R. 390-392; 43, 182-183).

The 1955 agreement, the initial term of which ran from August 10, 1955, to August 10, 1958, embraces the production and maintenance employees at the Reading plant, and also such employees at a second plant in Hillsdale, Michigan, which the Company acquired to relieve its overcrowded facilities at Reading (R. 392-394; 43, 45, 185-186).

The 1954 and 1955 contracts are substantially similar, and the articles providing for "Union Shop" and "Checkoff" in the 1955 agreement are identical with those in the 1954 agreement (R. 392-393; 283-286, 302-303). These provisions have been enforced under each of the contracts and every employee who has been with the Company 45 days or more has had his dues to the IAM checked off (R. 393-394; 195, 255).

In June and August 1955, charges were filed by an employee and served upon the Company and the IAM. The charges alleged in substance that enforcement of the union security provision of the agreement was violative of the Act (R. 263-266).

II. THE BOARD'S CONCLUSIONS OF LAW

The Board concluded, as had the Trial Examiner, that by compelling employees to join the IAM as a condition of employment, the Company had violated Section 8(a) (1), (2), and (3), and the IAM had violated Section 8(b) (1) and (2) of the Act (R. 411-

414, 436-437). Rejecting the contention that the compulsion was not unlawful because it was conducted under the aegis of a union security contract permissible under Section 8(a)(3), the Board noted that such an agreement is valid only when negotiated with a union representing a majority of the employees. In this case the Board noted that the facts and circumstances surrounding the execution of the 1954 agreement established a *prima facie* case of lack of majority representation and that neither the Company nor the IAM came forward with any evidence whatsoever to refute that showing (R. 436-437).*

The Board, with two members dissenting, also rejected the contention that because the initial union-security agreement was executed over six months prior to the filing and service of charges, Section 10 (b) of the Act precluded the issuance of a complaint in the case (R. 432-433). In agreement with the Trial Examiner, the Board held that, while it was precluded by the Section 10(b) limitation from finding that the *execution* of the 1954 contract was an unfair labor practice, it was not so precluded with respect to its maintenance and enforcement, and the execution, maintenance and enforcement of the 1955 contract perpetuating such unlawful conduct, all within the six-month period preceding the filing of the charges (R. 432-435).

* In a separate concurring opinion, Member Jenkins concluded that the union-security provision in Section 8(a)(3), being in the nature of an exception to the Act, placed the burden of proving compliance with its requirements, in the first instance, on the Company and the IAM (R. 443).

Noting that Section 10(b) is a statute of limitations and not a rule of evidence, the Board held that evidence of the unlawfulness of the 1954 contract at the time it was executed was admissible to show its continued invalidity, which does not end with its execution, but "continues so long as the unlawful contract remains in effect" (R. 432-433).

III. THE BOARD'S ORDER

The Board ordered the Company and the IAM to cease and desist from giving effect to their contract, and directed the Company to withhold recognition from the IAM, unless and until it was certified as the bargaining representative of the employees (R. 437-440). The Board further ordered the Company and the IAM to cease and desist from entering into, maintaining, or renewing their union security agreement, which failed to meet the requirements of Section 8(a)(3), and from in any like or related manner invading employee rights under Section 7 of the Act (*ibid.*). The Board also ordered both parties to stop giving effect to any checkoff cards, and jointly and severally to reimburse employees for any dues or initiation fees checked off pursuant to any agreement between the parties (R. 442).⁷ Finally, the order directs both parties to post appropriate notices (R. 438-442, 457-461).

⁷ The Company's liability for reimbursement of dues and initiation fees commences December 10, 1954 (six months prior to the service of the charge upon the Company), and the Union's liability commences February 8, 1955 (six months before service of the charge upon the Union) (R. 441-442, 260-266).

IV. THE HOLDING OF THE COURT BELOW

The court of appeals, with Judge Fahy dissenting, sustained the Board's order (R. 466-477). The court observed that, while the contract was executed outside the limitations period, its enforcement within the period by compelling employees to join the Union was an unfair labor practice cognizable by the Board, for the six-month proviso creates a period of limitations, not a rule of evidence. Noting that the compulsion of union membership was regularly repeated within the six-month period, the court held that the Board could properly consider events prior to the six-month period to determine whether conduct within that period was lawful. Finally, the court below sustained the Board's order directing the reimbursement of dues.

SUMMARY OF ARGUMENT

1. Section 10(b) provides a period of limitations governing past violations and extinguishes liability for unfair labor practices committed more than six months prior to the filing of charges. Section 10(b) enacts a statute of limitations and not a rule of evidence. Hence, while the statute extinguishes liability for past violations, it does not preclude the Board from taking cognizance of a condition, fact or event, which antedates the limitations period for the purpose of determining whether conduct within that period is violative of the Act.

The critical fact from which this controversy springs is that the IAM was not the bargaining representative of the employees when the union security agreement was executed. That fact has probative and

legal significance not only with respect to the execution of the agreement but also with respect to its enforcement for it renders both unlawful. The limitations which Section 10(b) imposes upon any Board inquiry into that fact turns upon the purpose of the inquiry and the use which is made of the fact. It cannot serve as the basis for charging petitioners with liability for having executed the illegal agreement. That unfair labor practice antedates the limitation period and Section 10(b) extinguishes liability for that illegal action. The statute does not, however, preclude the Board from taking cognizance of that fact for the purpose of determining liability for conduct within the statutory period, in this case, the enforcement of the agreement. There is no basis for differentiating this fact from any other probative or relevant evidence of which the Board may take cognizance. The statute does not limit the Board's use of relevant or probative evidence on the basis of its vintage; the sole bar which the statute interposes is that the Board may not find that conduct antedating the six-month period is an unfair labor practice.

The Board's finding that enforcement of the contract in the instant case constituted an unfair labor practice does not rest upon a subsidiary finding that its execution was also an unfair labor practice. It was unnecessary for the Board to make such a finding; nor are the sanctions of the Board's order directed to that past offense. To be sure, the IAM's lack of representative status also rendered the execution of the agreement an unfair labor practice which

could have been brought before the Board upon timely charges. But petitioners have not been found liable by the Board for that unfair labor practice. Their liability is predicated upon an unfair labor practice, enforcement of the agreement, within the limitations period. Hence, there is no infringement of the statutory prohibition against a complaint based upon any unfair labor practice antedating the limitations period.

The Board's construction of Section 10(b) does not do violence to the policy of repose inherent in a statute of limitations. The "wrong" in the instant case did not cease with the execution of the agreement. The continued enforcement of the agreement constituted a continuing invasion of the employees' statutory rights. And as to that, "the six months' limitation period had not even begun to operate" (*National Labor Relations Board v. Gannett News Co.*, 197 F. 2d 719, 722 (C.A. 2), affirmed 347 U.S. 17).

II. The Board's order directing petitioners to reimburse the employees for dues and fees checked off pursuant to the illegal contract is proper and valid. Such an order "should stand unless it can be shown that [it] is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U.S. 533, 539-540. Judged by this test, the Board's order against petitioners is lawful. The coercion exerted here upon the employees is indistinguishable from the illegal compulsion in *Virginia Electric* where this Court upheld a similar reimbursement order. No sig-

nificant distinction between the two cases exists because in *Virginia Electric* the union which was the beneficiary of the check-off provision was dominated by the employer. In terms of the propriety of the remedy, it makes little difference whether the employees' rights have been violated through an employer-dominated labor organization or through a union which they are compelled, by an illegal union security agreement, to join and support on pain of losing their jobs. In either case the employees have been deprived of their statutory freedom of choice. And in each case the refund order restores to the employees monies which, had it not been for the illegal arrangement, they would not have been required to pay.

ARGUMENT

I. SECTION 10(b) OF THE ACT DOES NOT PRECLUDE THE BOARD FROM FINDING THAT THE ENFORCEMENT OF A UNION SECURITY AGREEMENT WITHIN SIX MONTHS OF THE FILING OF THE CHARGES CONSTITUTES AN UNFAIR LABOR PRACTICE WHERE THE UNION DID NOT REPRESENT A MAJORITY OF THE EMPLOYEES WHEN IT ENTERED INTO THE AGREEMENT MORE THAN SIX MONTHS PRIOR TO THE FILING OF THE CHARGES.

Section 7 of the Act guarantees to employees the right, *inter alia*, "to * * * join * * * labor organizations, to bargain collectively through representatives of their own choosing * * * and * * * the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)." Section 8 of the Act implements the protection of these rights against interference by em-

employers or labor organizations. Sections 8(a) (1), (2) and (3) forbid an employer from interfering with, restraining or coercing employees in the exercise of their Section 7 rights; from contributing support to any labor organization; and from discriminating with respect to hire or tenure of employment to encourage or discourage membership in any labor organization. Sections 8(b) (1) and (2) of the Act enjoin labor organizations from restraining or coercing employees in the exercise of their Section 7 rights and from causing or attempting to cause an employer to discriminate against employees in violation of Section 8(a)(3).

The proscriptions thus addressed to employers and unions are subject to the qualification contained in the proviso to section 8(a)(3) that "nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made; * * *." Section 9(a), in turn, provides that "Representatives designated * * * by the majority of the employees * * * shall be the exclusive [collective bargaining] representatives".

Simply stated, the statute permits an employer and a union to require membership in the union as a con-

dition of employment only if there is in effect a valid union security agreement which satisfies the conditions prescribed by the statute. Where the agreement does not qualify under the statute, its *execution* and *enforcement* violate the Act; and each constitutes a separate and independent unfair labor practice. The execution of the agreement is illegal "because the existence of such an agreement without more tends to encourage membership in a labor organization. The individual employee is forced to risk discharge if he defies the contract by refusing to become a member of the union." *Red Star Express Lines v. National Labor Relations Board*, 196 F. 2d 78, 81 (C.A. 2). The application or enforcement of such an agreement constitutes an unfair labor practice because it effectuates the discrimination which is expressly forbidden except in accordance with the narrow terms of the proviso permitting union security agreements. *National Labor Relations Board v. Electric Vacuum Cleaner Co.*, 315 U.S. 685, 695; *National Labor Relations Board v. Gottfried Baking Co.*, 210 F. 2d 772, 779, 780 (C.A. 2); *National Labor Relations Board v. Wemyss*, 212 F. 2d 465, 471 (C.A. 9); *National Labor Relations Board v. Broderick Wood Products Co.*, 261 F. 2d 548, 556 (C.A. 10); *National Labor Relations Board v. Gaynor News Co.*, 197 F. 2d 719, 723 (C.A. 2), affirmed, 347 U.S. 17; *National Labor Relations Board v. United Hoisting Co.*, 198 F. 2d 465, 468-469 (C.A. 3), certiorari denied 344 U.S. 914; *National Labor Relations Board v. F. H. McGraw & Co.*, 206 F. 2d 635, 639 (C.A. 6), and cases there cited; *National Labor Relations Board v. Inter-*

National Brotherhood of Teamsters, 225 F. 2d 343, 346, 349 (C.A. 8); *National Labor Relations Board v. Shuck Construction Co.*, 243 F. 2d 519, 521 (C.A. 9).

In the instant case, the Board found, and petitioners concede, that the IAM did not represent a majority of the employees when the agreement was negotiated. Indeed, insofar as the record shows, the IAM did not then represent a single employee. Hence, the execution of that agreement and its subsequent enforcement constitute separate and independent unfair labor practices. The violation with which we are concerned here, however, is not the execution of the contract but its enforcement.

The central issue posed by this case is, therefore, the effect of the limitations period contained in Section 10(b) of the Act. That section provides that the Board may not issue a complaint "based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made * * *." The union security contract in the instant case was executed in August 1954 or more than six months prior to the filing of the charges in June and August 1955. Accordingly, under the statute the Board could, and did, not deal with the execution of the agreement as an independent unfair labor practice.

However, the parties to the agreement continued to enforce it within six months of the charge. The enforcement of the contract during that period thus constituted an unfair labor practice cognizable by the Board. Since the contract failed to meet the con-

ditions prescribed by the Act, it could not serve to sanction the otherwise illegal requirement of compulsory membership in the IAM. Accordingly, the issue here is whether under Section 10(b) the Board is precluded from dealing with the latter unfair labor practice merely because the disqualification of the parties to enforce the agreement must be established by reference to a fact which antedates the six-month period of limitations, namely, the IAM's lack of representative status when the agreement was made. We turn to that question.

1. Section 10(b) provides a period of limitations governing past violations and extinguishes liability for unfair labor practices committed prior to the six-month period. While the statute confers immunity for such past violations, neither its language nor legislative history suggests that it was also intended to preclude the Board from taking cognizance of a condition, fact, or event which antedates the six-month period for the purpose of determining whether conduct within that period is violative of the Act. As the Board has held (*Axelson Mfg. Co.*, 88 NLRB 761, 767):

* * * Section 10(b) enacts a statute of limitations and not a rule of evidence. It forbids the issuance of complaints and, consequently, findings of violation of the statute in conduct not within the 6-months' period. But it does not * * * forbid the introduction of relevant evidence bearing on the issue as to whether a violation has occurred during the 6-months' period. Events obscure, ambiguous, or even meaningless when viewed in isolation, may, like the component parts of an equation, become clear,

definitive and informative when considered in relation to other action. * * * Congress can scarcely have intended that the Board, in the performance of its duty to decide the validity of conduct within the six-months' period, should ignore reliable, probative and substantial evidence as to the meaning and nature of the conduct. Had such been the intent it seems reasonable to assume that it would have been stated.

This interpretation of Section 10(b) introduces no novel concept concerning the scope of statutes of limitations. The Court dealt with an analogous problem in *Federal Trade Commission v. Cement Institute*, 333 U.S. 683. There, the Commission found that the respondents had engaged since 1929 in unfair methods of competition and in a conspiracy to destroy price competition. In so finding, the Commission relied in part on respondents' activities prior to 1929 and on similar conduct subsequent to 1929, but during a period when such activities were lawful under the National Industrial Recovery Act. After noting that the Commission "did not make its findings of post-1929 combination, in whole or in part, on the premise that any of respondents' pre-1929 or NRA code activities were illegal", the Court stated, "The consideration given these activities by the Commission was well within the established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transaction under scrutiny." *Id.* at 704-705. See also,

Standard Oil Co. v. United States, 221 U.S. 1, 46-47;
United States v. Reading Co., 253 U.S. 26, 43-44.*

Consistent with this established judicial rule, the courts of appeals have uniformly held that Section 10(b) does not preclude the Board from looking to events or circumstances antedating the six-month period for the purpose of determining whether conduct within the period constitutes an unfair labor practice violative of the statute. *National Labor Relations Board v. Clausen*, 188 F. 2d 439, 443 (C.A. 3); *Paramount Cap Mfg. Corp. v. National Labor Relations Board*, 260 F. 2d 109, 113 (C.A. 8); *National Labor Relations Board v. General Shoe Co.*, 192 F. 2d 504, 507 (C.A. 6), certiorari denied, 343 U.S. 904; *Superior Engraving Co. v. National Labor Relations Board*, 183 F. 2d 783, 791 (C.A. 7), certiorari denied, 340 U.S. 390.

2. Petitioners acknowledge (Br. 55-57) that the Board may look to circumstances or events which antedate the limitations period as "background evidence" for the purpose of assessing the legality of conduct within the statutory period. They contend, however, that this rule can have no application to a situation where the antecedent events constitute an unfair labor practice and are the exclusive foundation

*In the criminal law, although the applicable statute may bar prosecution for a crime committed beyond the limited period, it does not prevent the admission of evidence of acts occurring before the period, which prove a crime not barred by the statute, even if this same evidence also would have been probative of the offense outlawed by the statute. *Purviance v. State*, 185 Md. 189, 44 A. 2d 474-478; *People v. Cuevas*, 18 Cal. App. 2d 151, 63 P. 2d 311, 312.

for finding a violation within the period. The Board, so the argument runs, could not find that the enforcement of the agreement here during the limitations period was violative of the Act without also finding, as an indispensable predicate, that the execution of the agreement was an unfair labor practice and this it cannot do under Section 10(b).

The critical fact from which this controversy springs is that the IAM was not the bargaining representative of the employees when the union security agreement was executed. That fact has probative and legal significance not only with respect to the execution of the agreement but also with respect to its enforcement for it renders both unlawful. The limitations which Section 10(b) imposes upon any Board inquiry into that fact turns upon the purpose of the inquiry and the use which is made of the fact. It cannot serve as the basis for charging petitioners with liability for having executed the illegal contract. That unfair labor practice antedates the limitations period and Section 10(b) "extinguishes liability for unfair labor practices committed more than six months prior to the filing of the charge". *National Labor Relations Board v. Fant Milling Co.*, 360 U.S. 301, 309, n. 9. But the statute does not preclude the Board from taking cognizance of that fact for the purpose of determining liability for conduct within the statutory period, in this case the enforcement of the agreement. There is no basis for differentiating this fact from any other probative or relevant evidence of which the Board may take cognizance. The statute does not limit the Board's use of probative or relevant

evidence on the basis of its vintage; the sole bar which the statute interposes is that the Board may not find that conduct antedating the six-month period is an unfair labor practice.

The Board's finding that enforcement of the contract in the instant case constituted an unfair labor practice does not rest upon a subsidiary finding that its execution was also an unfair labor practice. It was unnecessary for the Board to make such a finding; nor are the sanctions of the Board's order directed to that past offense. All that the Board has done is to look to the IAM's status when the agreement was executed to determine whether the statutory conditions for such agreements had been met. IAM's lack of representative status also rendered the execution of the agreement an unfair labor practice which could have been brought before the Board upon a timely charge, but petitioners have not been found liable by the Board for that unfair labor practice. Their liability is predicated upon the enforcement of the agreement within the limitations period. Hence, neither the complaint nor the Board's decision is "based upon any unfair labor practice[s]" which antedate the limitations period.

This distinction underlies the decision of the Court of Appeals for the Second Circuit in *National Labor Relations Board v. Gaynor News Co.*, 197 F. 2d 719, affirmed, 347 U.S. 17. There the Board found that the enforcement of a union security agreement was violative of the Act because the union, when it entered into the agreement more than six months prior to the filing of the charge, had not been authorized by the employees

in a Board conducted election, as the statute then required, to enter into such an agreement. There, as here, the illegality of the union security agreement arose out of a condition prevailing when the agreement was executed. And in order to find the unfair labor practice within the limitations period, the Board had to look to a circumstance which antedated the six-month period, i.e., the union's failure to obtain the necessary authorization to enter into such an agreement. This circumstance also rendered the execution of the agreement an unfair labor practice which the Board was precluded from dealing with by virtue of the limitations proviso. Rejecting the contention that Section 10(b) also barred the Board from finding that enforcement of the agreement within the limitations period was violative of the Act, the Second Circuit held that "so long as that contract continued in force, if actually illegal, a continuing offense was being committed by the employer. Since the contract was still in force at the time of filing [of the charge], the six-months' limitation period of § 10(b) had not even begun to operate." 197 F.2d at 722.

This view of the limitations proviso was also adopted by the Court of Appeals for the Ninth Circuit in *Katz v. National Labor Relations Board*, 196 F.2d 411. There the union, as in *Gaynor*, lacked the requisite authorization when it entered into a union security agreement more than six months prior to the filing of the charge. The Ninth Circuit held that "While * * * the mere execution of the agreement on

December 17, 1948, constituted an unfair labor practice, there is no doubt that the continuous enforcement of the agreement thereafter within the six-month period prior to the filing of the charge, was an unfair labor practice, and with respect to this continued and continuous enforcement of the illegal union shop agreement, the prosecution of the proceeding was not barred by limitations." 196 F.2d at 415.*

The distinction also explains the decision of the Fifth Circuit in *American Federation of Grain Millers v. National Labor Relations Board*, 197 F. 2d 451, 454, on which petitioners rely, and serves to distinguish it from the instant case. There, a charge was filed alleging the discriminatory refusal to rehire a striker. The striker had been replaced by the employer and he was not entitled to reinstatement unless the strike had been caused or prolonged by the employer's unfair labor practices. It was alleged that the strike had been caused by the employer's illegal refusal to bargain with the employees' representative which had occurred more than six months prior to the filing of the charges. The striker's right to reinstatement therefore hinged upon a finding that the employer's antecedent refusal to bargain constituted an unfair labor practice. Hence, there, unlike here, the Board, to have found an unfair labor practice within the statutory period, would have had to make the

* Petitioners would distinguish these cases on the ground that the invalidity of the union security agreement was provable by a fact existing within the six-month period, namely, the lack of a certificate of authorization (Br. 67). This distinction, if such it be (see, *supra*, pp. 27-28), is not reflected in the rationale of these cases.

further finding that another unfair labor practice had been committed outside the six-month period. Observing this critical distinction, both the Board and the Fifth Circuit agreed that Section 10(b) foreclosed the Board from entertaining the striker's charge.¹⁰ Cf. *National Labor Relations Board v. Textile Machine Works*, 214 F. 2d 929 (C.A. 3); *National Labor Relations Board v. Childs Co.*, 195 F. 2d 617 (C.A. 2); *National Labor Relations Board v. Pennwoven*, 194 F. 2d 521 (C.A. 3).

To further illustrate: Suppose, for example, that an employer on opening his plant announces that he will discharge any employee who joins a union. A year later an employee upon joining a union is discharged, and thereupon files a charge with the Board alleging that his dismissal is discriminatory. The employer's threat constitutes, of course, an unfair labor practice but in the absence of a timely charge, the Board cannot deal with it as such. However, even though the limitations provision precludes the issuance of a complaint based on that unfair labor practice, surely the Board may properly consider the threat as a probative fact bearing upon the legality of the discharge within the statutory period. Cf. *Paramount Cap Mfg. Co. v. National Labor Relations Board*, 260 F. 2d 109, 112-113 (C.A. 8).

¹⁰ But cf. *National Labor Relations Board v. Brown & Root, Inc.*, 203 F. 2d 139, where the Eighth Circuit rejected this view and held that Section 10(b) did not preclude the Board from looking to the employer's antecedent conduct for the purpose of determining whether or not striking employees were entitled to reinstatement, 203 F. 2d at 145-146.

The Board's position draws support from the decision of this Court in *Murphy v. Ramsey*, 114 U.S. 15. The case does not, of course, arise in the field of labor relations but the analysis which underlies the Court's ruling has significance here. There, election officials disqualified one Murphy from voting on the ground that he was a polygamist and therefore under the relevant statute not entitled to voting privileges. Murphy defended his right to vote on the ground that for more than three years prior to the passage of the statute he had not "entered into any marriage contract or relation with any woman" nor "cohabited with more than one woman"; that prosecution for any plural marriage which he may have contracted prior thereto was barred by statute after the lapse of three years; and that the disfranchisement constituted punishment for a past offense. Rejecting this contention, the Court declared (114 U.S. at 43):

* * * The disfranchisement operates upon the existing state and condition of the person, and not upon a past offence. It is, therefore, not retrospective. He alone is deprived of his vote who, when he offers to register, is then in the state and condition of a bigamist or a polygamist, or is then actually cohabiting with more than one woman. Disfranchisement is not prescribed as a penalty for being guilty of the crime and offence of bigamy or polygamy; for, as has been said, that offence consists in the fact of unlawful marriage, and a prosecution against the offender is barred by the lapse of three years, by § 1044 of the Revised Statutes. Continuing to live in that

state afterwards is not an offence, although cohabitation with more than one woman is. But as one may be living in a bigamous or polygamous state without cohabitation with more than one woman, he is in that sense a bigamist or a polygamist, and yet guilty of no criminal offence. So that, in respect to those disqualifications of a voter under the act of March 22, 1882, the objection is not well taken that represents the inquiry into the fact by the officers of registration as an unlawful mode of prosecution for crime.

3. Petitioners urge (Br. 33-35) that to permit an inquiry into the inception of the bargaining relationship here which antedates the statutory period does violence to the policy of repose inherent in a statute of limitations. Petitioners misapply this policy. In the conventional situation involving a limitations statute a wrong has been committed; whatever invasion of legally protected interests has occurred is final and complete when the offense is committed. The policy of repose reflected in a statute of limitations requires the injured party to take timely action for the redress of the consummated wrong; absent such timely action he is thereafter barred from seeking relief for that past wrong. In the instant case an unfair labor practice was committed when petitioners executed the union security agreement. But the agreement, once it had been executed, did not have a mere passive existence. The parties thereafter continued to enforce it within the six-month period. The "wrong" did not cease with the execution of the agreement for which liability was cut off after the six-

month period; the continued enforcement of the agreement constituted a continuing invasion of the employees' statutory rights. And as to that, "the six months' limitation period * * * had not even begun to operate." *Gaynor, supra*, p. 29. As the court below observed (R. 475; see also R. 470, 472, 473), "The dispute here involved is not the kind which buries easily but rankles at least once a month in the mind of those offended by being forced, as they see it, to pay tribute to an organization they had no really free choice in joining."

The decision of the Eighth Circuit in *National Labor Relations Board v. International Brotherhood of Teamsters*, 225 F. 2d 343, throws a beacon of light here. In that case the employer and the union, under an illegal arrangement giving the union authority to settle all seniority questions, adopted a seniority list which discriminated in favor of employees who had promptly joined the union upon their employment and against those who had joined at a later date. The disfavored employees were not pecuniarily affected by the seniority list until after more than six months after the list was adopted and thereupon they filed charges alleging unlawful discrimination. The court, rejecting the argument that under Section 10(b) the Board was precluded from entertaining the charge, said, 225 F. 2d at 346:

* * * We agree with the position of the Board * * * that, when the union and the employer failed to take steps to correct their unlawful action, but chose instead to make subsequent specific use or application of the improper

seniority list to subject the five employees to a direct personal loss in work opportunity, they engaged in an additional step of legal wrong, having a produced consequence and a union-joining compulsion extending beyond the mere passive existence of the improper seniority list, and that they thereby were guilty of committing such a discrimination as remedially entitled a charge to be filed with the Board within a six-months period after the work deprivation had occurred.

Equally insubstantial, we think, is petitioners' related claim (Br. 31-34) that the Board's interpretation of Section 10(b) ignores the declared legislative purpose of protecting a respondent against liability for an unfair labor practice "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused." H. Rep. No. 245, 80th Cong., 1st Sess., p. 40; 1 Leg. Hist. of the Labor-Management Relations Act, 1947, 331. Under that interpretation, petitioners assert, an employer and a union could be held liable under the last of a series of union security agreements, the first of which may have been executed many years before under circumstances no longer clear. Obviously that is not this case, for petitioners have never made an issue of the fact that the IAM did not represent a majority of the employees when they entered into the union security agreement. The argument, moreover, confuses the distinction between statutes of limitations which preclude liability for past conduct and rules governing the weight to be given evidence. Where the claim of lack of majority depends upon facts of ancient vintage, it may be that

the evidence will be of insufficient probative force. But this goes to the weight of the evidence rather than to admissibility. As stated in *Purviance v. State*, 185 Md. 189, 44 A. 2d 474, at 478:

* * * While the trial court may, and in some instances should, reject evidence which, although relevant or deemed to be relevant, appears too remote to be material, yet of course there are many instances in which particular evidence has been held not inadmissible on this ground; and ordinarily remoteness affects the weight, rather than the admissibility, of evidence. The question of excluding evidence because of remoteness rests largely in the sound discretion of the trial judge.

4. The support which petitioners seek to derive from certain appropriations riders for their interpretation of Section 10(b) is illusory. It is evident that the riders had far broader sweep than Section 10(b). In the riders, Congress, in comprehensive language, accorded the broadest kind of immunity to a labor agreement once it had been in effect for a stated period notwithstanding any illegality which may have attached to the agreement. Section 10(b), on the other hand, has no such far-reaching purpose. As this Court has noted, the Section was designed merely to extinguish liability for unfair labor practices committed more than six months prior to the filing of charges. *Fant Milling, supra*, p. 27. This is far from saying, as the riders did, that once a contract had been in effect for six months without the filing of a charge, that no liability could be predicated upon the enforcement of that agreement within the limitations period.

The difference between the riders and Section 10(b) and the irrelevance of the former for purposes of construing the latter may be demonstrated by an additional consideration. Petitioners concede (Br. 39) that where a union shop agreement is invalid on its face, the Section 10(b) limitations period is inapplicable. Under the appropriations riders, however, such an agreement would have been immune to attack once the stated period had elapsed without a complaint having been filed.

To be sure, the Senate Committee reporting Section 10(b) stated that it rendered the appropriations rider unnecessary. S. Rep. No. 105, 80th Cong., 1st Sess. p. 26; 1 Leg. Hist. of the Labor-Management Relations Act, 1947, 432. But this does not necessarily imply that Section 10(b) was intended to be, insofar as labor agreements were concerned, coextensive with the broad reach of the riders. All that can be attributed to the Senate Report statement is that Section 10(b) dealt with the question of liability for past unfair labor practices generally and there was no longer any need for such specialized legislation as the rider. In these circumstances, we cannot look to the riders for the purpose of interpreting Section 10(b).

5. Finally, if Section 10(b) is susceptible to differing interpretations, we believe that important policy considerations tip the scales in favor of the Board's interpretation. As we have noted, the Act assures to employees the right to join, assist and bargain collectively through representatives of their own choice. It also accords to them the right to refrain from any or all such activities. These correlative rights are the most fundamental guaranty of the

statute; all others are incidental to it. The only qualification upon the exercise of this right is contained in the proviso to Section 8(a)(3) which permits union security agreements conditioning employment upon union membership. But an indispensable condition for such a limitation upon the employees' statutory rights is that the union, party to such an agreement, be the freely chosen representative of the employees. The contract in this case failed to satisfy that condition and as a consequence the employees have been compelled continuously to join and support a union which could not lawfully require them to do either. A construction of Section 10(b) which would cut off liability for this continuing abrogation of the employees' statutory rights "is to be avoided unless the words Congress has chosen clearly compel it." *National Labor Relations Board v. Lion Oil Co.*, 352 U.S. 282, 289. As this Court observed in *Mastro Plastics Corp. v. National Labor Relations Board*, 350 U.S. 270, 287, "Moreover, in the face of the affirmative emphasis that is placed by the Act upon freedom of concerted action and freedom of choice of representatives," any limitation upon the employees' rights "must be more explicit and clear than it is here in order to restrict them at the very time they may be most needed."

Practical considerations, aptly illustrated by the instant case, lend additional support to the Board's reading of the limitations proviso. As noted above, an air of uncertainty prevailed among the employees as to how the IAM "got in" when they learned of the union security agreement. Their inquiries met eva-

sive replies and accusations of being trouble makers (R. 8-81, 82, 87, 119, 130, 202). Indeed, a year after the contract was executed, the employees continued to wonder how the IAM had managed to obtain the agreement (R. 100, 105, 375-379). It is not an easy matter for employees, especially in a plant of any size, to ascertain whether a majority of the employees have signed membership or authorization cards in favor of a particular union. Because such proof may not be readily available, an employee may well hesitate to risk possible reprisals for filing charges attacking the contract until he is sure of his ground. The result is, of course, that charges may not be filed until more than six months after the contract has been executed. The difficulties are even greater in the case of employees who are hired after the agreement has been executed and been in force for a period of time. If Section 10(b) precludes the filing of charges attacking the enforcement of the illegal contract within the statutory period, important statutory rights are lost through no fault of the employees.

II. THE BOARD'S ORDER DIRECTING THE COMPANY AND THE IAM TO REIMBURSE THE EMPLOYEES FOR INITIATION FEES AND DUES CHECKED OFF PURSUANT TO THE ILLEGAL CONTRACT IS PROPER AND VALID

The Board's order directs the Company and the IAM jointly and severally to reimburse the employees for initiation fees and dues checked off pursuant to the contract.¹¹ As we have shown, the contract unlaw-

¹¹ As stated above, p. 16, the liability in this respect is limited to the period beginning six months prior to the service of the charges upon the Company and the Union, respectively.

fully required the Company's employees to become members of the IAM and to pay dues and initiation fees as the price of continued employment. The Company collected these sums by means of the checkoff. Plant Manager McFann testified that subsequent to the execution of the August 1954 contract "all the employees authorized the checkoff sheet except possibly a few on probation" and that no employee who had been employed 45 days or longer had ever refused to have his dues checked off (R. 255).

Petitioners do not question the Board's power to prescribe such a reimbursement order. They challenge the order here as an abuse of the Board's discretion. The considerations which have prompted the Board to adopt this remedy were explicated by the Board in *United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry*, 115 NLRB 594. Although in that case the illegal hiring agreement provided for a closed shop, the Board's reasoning is fully applicable here. The Board said, at pp. 600-601:

* * * the Taft-Hartley amendments have made unlawful all closed-shop contracts as contrary to public policy, proscribing such conduct by unions as unfair labor practices. The dues required and collected under such a contract, and all assessments under any contract, contravene that public policy. It is no longer required by the Act that the union be company-dominated in order for collection of dues to be unlawful under a closed-shop contract. Here, the dues and the assessments were required and collected pursuant to a contract which clearly contra-

vened the public policy of the Act. Dues and assessments here collected constituted the price these employees paid in order to retain their jobs. We therefore conclude that the remedy of reimbursement of all such monies is appropriate and necessary to expunge the illegal effects of the unfair labor practices found here.

Frequently, since enactment of the Taft-Hartley amendments, this Board has ordered unions to reimburse members for dues, excessive initiation fees, or the monies unlawfully exacted as the price of employment, even in the absence of an employer-party to the proceeding and in the absence of any findings of Section 8(a)(2) violations.

It is our view that, where payment of dues is required under a closed-shop contract, as where assessments are required under an otherwise valid agreement, reimbursement of such monies actually collected will best effectuate the policies of the Act. Otherwise the very fruits of the unfair labor practice itself will remain in the hands of the respondent. [Footnotes omitted.]

The decision of the Court in *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U.S. 533, is, in our view, dispositive of petitioners' attack upon the remedy adopted by the Board here. In that case the Court approved the Board's order which directed the refund of dues and fees paid by the employees pursuant to an agreement between the employer and a union dominated by the former that provided for a closed shop and a checkoff of dues. Such a directive, the Court declared, "should stand unless it can be shown the order is a patent attempt

to achieve ends other than those which can fairly be said to effectuate the policies of the Act." 319 U.S. at 539-540. Judged by this test, the Board's order against petitioners is entitled to stand. For just as no such showing was made in *Virginia Electric*, so none can be made in the instant case.

As we have noted, the union security agreement here, in flagrant disregard of the Act, has required the employees willy-nilly to join and support a union which could not lawfully require them to do either. The coercion thus exerted here is indistinguishable from the illegal compulsion in *Virginia Electric*. As in that case, we submit, the Board may "expunge the effects of the unfair labor practices by ordering the reimbursement of checked-off dues." *Virginia Electric*, 319 U.S. at 541. In both situations the order "returns to the employees what has been taken from them to support an organization not of their free choice and places the burden upon the Company [and Union] whose unfair labor practices brought about the situation." *Ibid.* Accord: *National Labor Relations Board v. Local 404*, 205 F. 2d 99, 104 (C.A. 1); *National Labor Relations Board v. Baltimore Transit Co.*, 140 F. 2d 51, 57-58 (C.A. 4), certiorari denied, 321 U.S. 795; *Dixie Bedding Manufacturing Co. v. National Labor Relations Board*, 268 F. 2d 901 (C.A. 5); *National Labor Relations Board v. Parker Bros.*, 209 F. 2d 278, 280 (C.A. 5); *National Labor Relations Board v. Broderick Wood Products Co.*, 261 F. 2d 548, 558-559 (C.A. 10).

Petitioners assert, however (Br. 83-85), that *Virginia Electric* is inapposite for there, unlike here, the

union which was the beneficiary of the check-off provision was dominated by the employer. But this circumstance supplies no meaningful distinction. For it would seem to make little difference, in terms of the propriety of the remedy, whether the employees have been victimized through an employer-dominated labor organization or through a union which they are compelled to join and support on pain of losing their jobs by virtue of an illegal union security agreement. In either case the employees have been deprived of their statutory freedom of choice. And in each case the refund order restores to the employees monies which, absent the illegal arrangement, they could not have been required to pay.

Nor is the propriety of the Board's order lessened, as petitioners suggest (Br. 74-80), by the circumstance that the employees may have derived adequate compensatory benefits from union representation. The speculative nature of these claims, even if they were of significance, hardly needs to be emphasized. It may be that the IAM obtained benefits for the employees; but "it is manifestly impossible to say that greater benefits might not have been secured if the freedom of choice of a bargaining agent had not been interfered with." *Virginia Electric, supra*, at 544. And, it may be added, even if the employees here received an adequate *quid pro quo*, this is not always the case. Collusive union security agreements have been known to serve as devices for mulcting unwilling employees with little or no benefit to them. Cf. *Dixie Bedding Manufacturing Co. v. National Labor*

Relations Board, 268 F. 2d 901 (C.A. 5).¹² Moreover, it is evident that the argument, carried to its logical conclusion, would for all practical purposes deny to the Board the only effective sanction against collusive illegal union security arrangements. In any event, as this Court observed in *Virginia Electric*, 319 U.S. at 543:

* * * It is equally wrong to fetter the Board's discretion by compelling it to observe conventional common law or chancery principles in fashioning such an order, or to force it to inquire into the amount of damages actually sustained. Whether and to what extent such matters should be considered is a complex problem for the Board to decide in the light of its administrative experience and knowledge. The Board has here determined that the employees suffered a definite loss in the amount of dues deducted from their wages and that the effectuation of the policies of the Act requires reimbursement of those dues in full. We cannot say that this considered judgment does not effectuate the statutory purposes.

Equally unpersuasive is the ancillary argument (Br. 77) that there is no reason to suppose that the employees who entered the Company's employment after the execution of the agreement did not willingly embrace the situation which they found. What is significant is that, in the absence of a valid union security agreement, these employees were entitled to be free of any obligation to join or support the IAM. Whether or not they may have willingly embraced

¹² See Second Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 621, 86th Cong., 1st Sess., pp. 302-309.

that obligation, the point is that they had no choice in the matter. And the statute guarantees to them the right to say "No," except only where there is in effect a lawful union security agreement. Without that right, the statutory freedom of choice is illusory and the impairment of that freedom is not redressed by the assertion that they would have joined in any event. Moreover, it is not enough to suggest that some employees might have done so. The burden would rest upon "the tortfeasor to disentangle the consequences" by showing that, had there been no contract, dues and fees would nevertheless have been paid. This petitioners are unable to do. *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. 2d 862, 872 (C.A. 2), certiorari denied, 304 U.S. 576.¹³

Petitioners seeks to buttress their argument with the contention (Br. 82) that the dues were checked off pursuant to the employees' individual voluntary authorization and, hence, the element of coercion could have played no part in the payment of dues and fees. But plainly it is immaterial whether the employee pays his dues and fees directly to the union or resorts to the convenience of a check-off whereby the employer deducts the fees and dues from his pay and

¹³ Accord: *National Labor Relations Board v. Swinerton*, 202 F. 2d 511, 515-516 (C.A. 9), certiorari denied, 346 U.S. 814; *National Labor Relations Board v. Stackpole Carbon Co.*, 105 F. 2d 167, 176 (C.A. 3). Nor would there be any "reason for" petitioners to "go scot-free because * * * [they] chose a method which leaves the victims unidentifiable" and possibly "some who could not have been injured are sharing with those who were." *Woolworth Co. v. National Labor Relations Board*, 121 F. 2d 658, 663 (C.A. 2).

transmits them to the union. The use of this device does not make the payment any the less compulsory.¹⁴ Nor is the coercion imposed upon the employees lessened by the suggestion (Br. 79) that the employees could have sought relief by filing a de-authorization petition calling for an election to test the IAM's representative status. Where the employees have been compelled to accept union membership and its costs, the employer and the union can hardly claim immunity for this wrongdoing merely because the coerced employees prefer not to expose themselves by filing an anti-union petition.

Finally, petitioners argue (Br. 80-81) that the reimbursement order visits a penalty not only upon the Company, which merely served as a conduit for transmitting the money, but also upon the membership of the IAM, to whose dues and fees the Union must look to satisfy the reimbursement order. The employer in *Virginia Electric* also acted as a conduit for the transfer of dues and fees to the union which was the beneficiary of the illegal checkoff. But this circumstance was of no avail, for, as the Court stated, the order properly "places the burden upon the Company whose unfair labor practices brought about the situation." 319 U.S. at 541. Further, it is no idle surmise that in that case the reimbursement order was

¹⁴ Petitioners' argument that the Board's order itself somehow exposes the weakness of the Board's case because it directs the refund of only dues and fees checked off and does not speak of dues paid directly is simply not addressed to the facts of this case. As stated above, pp. 14, 40, all of the employees submitted to the check-off and there was no reason for the Board to deal with dues paid directly.

undoubtedly satisfied at the expense of innocent stockholders of the company, for the dues and fees collected by the company did not remain in its treasury.

Petitioners intimate that the reimbursement order is a recent innovation of the Board and for that reason is somehow vulnerable. Even if an order which is not essentially different than that approved by the Court in 1943 in *Virginia Electric* can be thought to be novel, the novelty of a Board order is scarcely an argument against it. "In fashioning remedies to undo the effects of violations of the Act, the Board must draw on enlightenment gained from experience." *National Labor Relations Board v. Seven-Up Bottling Co.*, 344 U.S. 344, 346. This process necessarily permits change and innovation with a view to effectuating the purposes of the Act. Nor, finally, is it profitable to engage in discussion, as we are invited to, concerning the Board's extension of the reimbursement remedy to situations not now before the Court. As the Court has observed, "We decide only the case before us * * *." *Virginia Electric, supra*, 319 U.S. at 545.

CONCLUSION

For the reasons stated, the judgment below should be affirmed.

Respectfully submitted,

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OCTOBER 1959.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) [as amended, 65 Stat. 601] by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section

8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h) * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

SEC. 10. (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said

complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made * * *

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1959.

Local Lodge No. 1424, etc., et al., Petitioners, v. National Labor Relations Board.	On Writ of Certiorari to the United States Court of Appeals for the District of Co- lumbia Circuit.
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[April 25, 1960.]

MR. JUSTICE HARLAN delivered the opinion of the Court.

The question we decide in this case is whether an unfair labor practice complaint, whose charges against these petitioners were sustained by the National Labor Relations Board, was barred by the six-month statute of limitations contained in § 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 146, 29 U. S. C. § 160 (b). That section reads in pertinent part:

"Provided . . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made."

On August 10, 1954, petitioners Bryan Manufacturing Company and the International Association of Machinists, AFL, entered into a collective bargaining agreement for a unit of Bryan's employees. The agreement, as later supplemented in certain respects not material to this litigation, contained the conventional provisions, of which two are relevant here: the "recognition" clause, by which the Union was recognized as "the sole and exclusive bargaining agency for all employees" in the unit; and the "union security" clause, by which all employees were

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required, subject to a 45-day grace period, to become and remain members of the Union. On August 30, 1955, a new agreement was entered into, with Bryan, the Union, and petitioner Local Lodge No. 1424, IAM, as signatories, replacing the old agreement and applying additionally to employees at a newly opened plant as well as to those covered by the original agreement.

When the original agreement was executed on August 10, 1954, the Unions did not represent a majority of the employees covered by it.¹ Under §§ 7 and 8 of the Act²

¹ It was so found by the Board, and petitioners have not challenged that finding.

² Section 7 (61 Stat. 140, 29 U. S. C. § 157) provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8-(a) (3)."

Section 8 (61 Stat. 140, as amended, 29 U. S. C. § 158) provides:

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, . . . if such labor organization is the representative of the employees as provided

the Board has evolved the principle, not drawn in question here, that it is an unfair labor practice for an employer and a labor organization to enter into a collective bargaining agreement which contains a union security clause, if at the time of original execution the union does not represent a majority of the employees in the unit.³ The maintaining of such an agreement in force is a continuing violation of the Act, and the "majority status" of the union at any subsequent date—including the date of execution of any renewals of the original agreement—is immaterial, for it is presumed that subsequent acquisition of a majority status is attributable to the earlier unlawful assistance received from the original agreement.⁴

In June and August 1955, 10 months and 12 months after the execution of the original agreement, charges were filed with the Board and served upon the petitioners,

in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made;

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7:

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)

³ The same doctrine is applied to an agreement containing only a "recognition" clause making a union the exclusive bargaining agent for all employees in the unit covered by the agreement. See *Bernhard-Altmann Texas Co.*, 122 N. L. R. B. — (No. 142); *Charles W. Carter Co.*, 115 N. L. R. B. 251, 262; *International Metal Products Co.*, 104 N. L. R. B. 1076; *John B. Shriver Co.*, 103 N. L. R. B. 23, 38; and see the Trial Examiner's discussion in the present case, 119 N. L. R. B. 502, 555, n. 98. The agreement now in question contained both a union security and a recognition clause, but for convenience we shall deal with the matter in terms of the union security clause alone.

⁴ See 119 N. L. R. B., at 546, 548.

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alleging the Unions' lack of majority status at the time of execution and the consequent illegality of the continued enforcement of the agreement. Complaints were thereafter issued by the Board's General Counsel against the Unions and the Company. Petitioners contended before the Board that the complaints were barred by the limitations proviso of § 10 (b), set forth above. The Board, two members dissenting, held that the complaint was not barred by limitations, 119 N. L. R. B. 502, and the Court of Appeals affirmed, one judge dissenting. 264 F. 2d 575. We granted certiorari, 360 U. S. 916, because of the importance of the question in the proper administration of the National Labor Relations Act. For reasons given in this opinion we hold that the complaints against these petitioners are barred by time.³

We first note the opposing contentions of the parties. The Board starts with the premise that a collective bargaining agreement which contains a union security clause valid on its face, but which was entered into when the Union did not have a majority status, "gives rise to two independent unfair labor practices, one being the execution of the agreement, the other arising from its continued enforcement. Conceding that a complaint predicated on the *execution* of the agreement here challenged was barred by limitations", the Board contends that its complaint was nonetheless timely since it was "based upon" the parties' continued *enforcement*; within the period of limitations, of the union security clause. It is then said that even though the former was itself time-barred, the unlawful execution of the agreement was nevertheless "relevant in determining whether conduct within the 6-month period was unlawful," 119 N. L. R. B.,

³ The petition for certiorari also raised an issue as to the propriety of the relief ordered by the Board. Because of our view of the case it becomes unnecessary to reach that question.

at 504; evidence as to it was admissible because § 10 (b) is a statute of limitations, and not a rule of evidence.

On the other hand, petitioners contend that, standing alone, the union security clause and its enforcement were wholly innocent; that they were tainted only by virtue of the original unlawful execution of the agreement; and that since a complaint based upon that unfair labor practice was barred by limitations, that event itself could not be utilized to infuse with illegality the otherwise legal union security clause or its enforcement. They say, in short, that to apply in this situation the doctrine that § 10 (b) is a statute of limitations, and not a rule of evidence, is to circumvent the purposes of the section, and that acceptance of the Board's position would mean that the statute of limitations would never run in a case of this kind. We think petitioners' position represents the correct view of the matter.

It is doubtless true that § 10 (b) does not prevent all use of evidence relating to events transpiring more than six months before the filing and service of an unfair labor practice charge. However, in applying rules of evidence as to the admissibility of past events, due regard for the purposes of § 10 (b) requires that two different kinds of situations be distinguished. The first is one where occurrences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose § 10 (b) ordinarily does not bar such evidentiary use of anterior events.* The second situation is that where con-

* The most frequently cited Board expression of this principle is that found in *Axelson Mfg. Co.*, 88 N. L. R. B. 761, 766:

"As I interpret the statute however, Section 10 (b) enacts a statute of limitations and not a rule of evidence. It forbids the issuance of complaints and, consequently, findings of violation of the statute

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duct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of the earlier unfair labor practice is not merely "evidentiary," since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice.

The situation before us is of this latter variety, for the entire foundation of the unfair labor practice charged was the Union's time-barred lack of majority status when the original collective bargaining agreement was signed. In the absence of that fact enforcement of this otherwise valid union security clause was wholly benign.⁷ The

in conduct not within the 6 months' period. But it does not, as I construe it, forbid the introduction of relevant evidence bearing on the issue as to whether a violation has occurred during the 6 months' period. Events obscure, ambiguous, or even meaningless when viewed in isolation may, like the component parts of an equation, become clear, definitive, and informative when considered in relation to other action. Conduct, like language, takes its meaning from the circumstances in which it occurs. Congress can scarcely have intended that the Board, in the performance of its duty to decide the validity of conduct within the 6 months' period, should ignore reliable, probative, and substantial evidence as to the meaning and the nature of the conduct. Had such been the intent, it seems reasonable to assume that it would have been stated."

The Board, however, has developed certain limits on the applicability of this principle. See p. —, *post*, and note 13.

⁷ It was the view of one member of the Board majority that a presumption of illegality should attend the enforcement of a union security clause, so that sufficient proof of violation results merely from a showing that such a clause is operative, thus putting on the parties to the agreement the burden to defend by proving compliance with the requirements of the proviso to § 8 (a) (3) of the Act, 61 Stat. 140, as amended, 29 U. S. C. § 158 (a) (3), see note 2, *ante*, including

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Trial Examiner, whose findings were adopted by the Board, observed:

"The General Counsel concedes that the 6-month limitation of Section 10 (b) of the Act precludes currently finding the *execution** of the 1954 agreement to be an unfair labor practice, and also precludes currently finding its *enforcement* to be an unfair labor practice . . . at any time prior to the . . . periods . . . beginning 6 months prior to the . . . charges. . . . However, this concession in no way detracts from the crucial nature of the earlier events

majority status at the time of execution. 119 N. L. R. B., at 510. While acceptance of this view would concededly support the result reached below, it was not adopted by the Board, as the concurring member acknowledged. *Id.*, at 511. We too reject it. It rests on the mistaken judgment that the proviso to § 8 (a) (3) permits the inclusion of union security provisions "in derogation of the rights guaranteed employees in the definitive statement of national policy contained in Section 7," *id.*, at 510, and on the principle that, exoneration of certain types of union security clauses having been granted in a proviso, the burden of proving the proviso's applicability rests on him asserting it. The latter principle need not detain us; insights derived from syntactical analysis form a hazardous basis for the explication of major legislative enactments. As to the argument drawn from § 7, it would be enough to note that that very provision is in terms limited by the scope of the § 8 (a) (3) proviso. (See note 2, *ante.*) More to the heart of the matter, it is the entire Act, and not merely one portion of it, which embodies "the definitive statement of national policy." It is well known, and the legislative history of the 1947 Taft-Hartley amendments plainly shows, that § 8 (a) (3)—including its proviso—represented the Congressional response to the competing demands of employee freedom of choice and union security. Had Congress thought one or the other overriding, it would doubtless have found words adequate to express that judgment. It did not do so; it accommodated both interests, doubtless in a manner unsatisfactory to the extreme partisans of each, by drawing a line it thought reasonable. It is not for the administrators of the Congressional mandate to approach either side of that line grudgingly.

* Emphasis here by the Trial Examiner.

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because at the core of the General Counsel's contentions as to all of the unfair labor practices is his fundamental position that, *because of the circumstances prevailing when made*, the original union-security agreement of 1954 has never been valid or legal, since it has never met certain overriding requirements of Section 8 (a) (3) of the Act." 119 N. L. R. B., at 530. (Emphasis added, except as indicated:)"

Where, as here, a collective bargaining agreement and its enforcement are both perfectly lawful on the face of things, and an unfair labor practice cannot be made out except by reliance on the fact of the agreement's original unlawful execution, an event which, because of limitations, cannot itself be made the subject of an unfair labor practice complaint, we think that permitting resort to the principle that § 10 (b) is not a rule of evidence, in order to convert what is otherwise legal into something illegal, would vitiate the policies underlying that section. These policies are to bar litigation over past events "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused," H. R. Rep. No. 245, 80th Cong., 1st Sess., p. 40,¹⁰ and of course to stabilize existing bargaining relationships.

* These observations were accepted both by the Board and the Court of Appeals. 119 N. L. R. B., at 503-504; 264 F. 2d, at 579. See also *Lively Photos, Inc.*, 123 N. L. R. B. — (No. 126).

¹⁰ The Examiner's Report shows the pertinency of this statutory purpose in the present case. In his analysis of the evidence, he observed:

"It is evident that with many witnesses testifying as to numerous different matters, it would protract this report greatly to summarize all of the testimony, or to spell out fully the confusion and inconsistencies therein, much of which is not too surprising, in view of the fact that, with respect to the events of August 1954 [the events

Our view of the matter is lent support by the attitude of the Board itself, whose previous decisions, albeit not always with unanimity among its members or even perhaps with perfect consistency, have recognized that evidentiary rules as to past events must be regarded differently in the two situations we have already depicted. Compare, *e. g.*, *Potlatch Forests, Inc.*, 87 N. L. R. B. 1193, where evidence as to events during the barred period was used to illuminate current conduct claimed in itself to be an unfair labor practice,¹¹ with *Bowen Products Corp.*, 113 N. L. R. B. 731, and *Greenville Cotton Oil Co.*, 92 N. L. R. B. 1033, *aff'd sub nom. American Federation of Grain Millers, A. F. L. v. Labor Board*, 197 F. 2d 451, where the gravamen of the unfair labor practice complained of lay in a fact or event occurring during the barred period.¹²

"at the core" of the allegations of illegality], there had been a lapse of almost 15 months before testimony was given in November 1955." 119 N. L. R. B., at 529.

¹¹ In that case, in explaining his consideration of "relevant evidence" antedating the six-month period, the Trial Examiner, whose report was confirmed by the Board, said: "The Respondent's earlier conduct has been considered here merely for the purpose of bringing into clearer focus the conduct in issue. Even without such consideration, however, the allegations of discrimination would have been found amply supported by such undisputed record facts as bear directly upon the layoffs of [the employees involved within the six-month period]." 87 N. L. R. B., at 1211. See also *Local 1418, International Longshoremen's Assn.*, 102 N. L. R. B. 720, 729-730, relied on by the Board, and *Labor Board v. General Shoe Corp.*, 192 F. 2d 504; *Labor Board v. Clausen*, 188 F. 2d 439; and *Superior Engraving Co. v. Labor Board*, 183 F. 2d 783, cited by a dissenting opinion here.

¹² In *Bowen Products* an employee recalled from layoff was discriminatorily placed at the bottom of the relevant seniority list. He unsuccessfully attempted to obtain his proper seniority rating, and several months later was included in an economic reduction in force. Had his seniority originally been properly computed, he would not have been laid off at that time. The charge was filed and served

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Indeed, some Board cases have gone even further and held § 10 (b) a bar in circumstances when, although none of the material elements of the charge in a timely complaint need necessarily be proved through reference to the barred period—so that utilization of evidence from that period is ostensibly only for the purpose of giving color to what is involved in the complaint—yet the evidence in fact marshalled from within the six-month period is not substantial, and the merit of the allegations in the complaint is shown largely by reliance on the earlier events. See, e. g., *News Printing Co., Inc.*, 116 N. L. R. B. 210, 212; *Universal Oil Products Co.*, 108 N. L. R. B. 68; *Tennessee Knitting Mills, Inc.*, 88 N. L. R. B. 1103.¹³

within six months of the layoff, but more than six months after the original determination of seniority status. Finding that the only basis for a holding of unlawful layoff would be a finding that that determination had been a violation of the Act, the Board dismissed the complaint.

Greenville Cotton Oil (American Federation of Grain Millers) dealt with an alleged discriminatory refusal to reinstate strikers. Conceding that the respondent had engaged permanent replacements, the strikers demanded reinstatement on the ground that the strike had been caused or prolonged by an unfair labor practice committed by the employer prior to the hiring of the replacements. The acts alleged to have constituted such unfair practices having taken place more than six months prior to the filing and service of the charge, the Board held § 10 (b) a bar to an order of reinstatement:

¹³ The complaint in *News Printing Co., Inc.*, alleged that a refusal to grant wage increases to certain employees had been motivated by displeasure at their union activities. As a substantive matter, this allegation turned on the respondent's motive at the time of the refusal, which was within the limitations period. However, the General Counsel was unable to produce sufficient evidence, from within that period, to prove discriminatory motive, and the Board refused to permit reliance on evidence relating to acts occurring prior to the six-month period. The contention that such earlier acts could be referred to in order to justify the inference that the "pattern of unlawful conduct . . . continued on into the present situation" was

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However, we express no view on the problem raised by such cases, for here we need not go beyond saying that a finding of violation which is inescapably grounded on events predating the limitations period is directly at odds with the purposes of the § 10 (b) proviso.¹⁴

rejected. 116 N. L. R. B., at 211. Compare *Paramount Cap Mfg. Co.*, 119 N. L. R. B. 785, 786, 799, enforcement granted, 260 F. 2d 109, where the presence of substantial post-limitations evidence was held to justify resort to evidence of earlier conduct.

The *Universal Oil Products* and *Tennessee Knitting Mills* cases concerned allegations that respondent employers had dominated or assisted labor organizations. Here again, the material issue was as to the relationship of the respondents to the unions involved, as of the date of the charge. Yet in both cases, because the evidence from within the statutory period was too sketchy to warrant a finding of unlawful conduct, the Board refused to permit reference to evidence from the earlier period, declining to rely on an inference that earlier unlawful relationships continued.

While it is true that in *Paint, Varnish & Lacquer Makers Union (Andrew Brown Co.)*, 120 N. L. R. B. 1425, the Board found union picketing during the six-month period to have been undertaken for the unlawful purpose of obtaining recognition, although the only affirmative evidence of such purpose was based on acts done prior to that period, the decision is not inconsistent, so far as presently relevant, with the cases discussed above. Substantial evidence of purpose from within the limitations period was found in reliance on the inference that the earlier motive had continued unchanged. *Id.*, at 1428, 1438. While the permissibility of an inference of this nature was rejected in the preceding cases, we need not now inquire into this seeming disparity of treatment, for it affects the minor premise only, and does not impair the accuracy of the proposition that, however marshalled, acts within the limitations period must under Board doctrine yield some substantial evidence of unlawful conduct.

¹⁴ *Katz v. Labor Board*, 196 F. 2d 411, and *Labor Board v. Gaynor News Co.*, 197 F. 2d 719, relied on below and in dissent here, arose under provisions of the Act (§ 8 (a) (3), 61 Stat. 140) since repealed, (65 Stat. 601), which permitted union security agreements only with unions which possessed a Board certificate that a union security clause had been authorized at a special election of the employees involved. While the language, and perhaps the approach, of these cases may be considered inconsistent with the principles

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The applicability of these principles cannot be avoided here by invoking the doctrine of continuing violation. It may be conceded that the continued enforcement, as well as the execution, of this collective bargaining agreement constitutes an unfair labor practice, and that these are two logically separate violations, independent in the sense that they can be described in discrete terms. Nevertheless, the vice in the enforcement of this agreement is manifestly not independent of the legality of its execution, as would be the case, for example, with an agreement invalid on its face or with one validly executed, but unlawfully administered. As the dissenting Board members in this case recognized, in dealing with an agreement claimed to be void by reason of the union's lack of majority status at the time of its execution,

"... the circumstances which cause the agreement to be invalid existed only at the point in time in the past when the agreement was executed and are not thereafter repeated. For this reason, therefore, the continuing invalidity of the agreement is directly related to and is based solely on its initial invalidity, and has no continuing independent basis." 119 N. L. R. B.; at 516.

In any real sense, then, the complaint in this case is "based upon" the unlawful execution of the agreement, for its enforcement, though continuing, is a continuing violation solely by reason of circumstances existing only at the date of execution. To justify reliance on those circumstances on the ground that the maintenance in effect of the agreement is a continuing violation is to support a lifting of

we deem governing here, the decisions on their facts present no such difficulty. Proof of the nonexistence of such a certificate, which of course was a continuing fact, plainly did not require resort to testimony about past events; rather the issue was much like one arising out of an agreement illegal on its face, the only difference being that a separate instrument was involved.

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the limitations bar by a characterization which becomes apt only when that bar has already been lifted. Put another way, if the § 10 (b) proviso is to be given effect, the enforcement, as distinguished from the execution, of such an agreement as this constitutes a *suable* unfair labor practice only for six months following the making of the agreement.¹³

The Board's ruling is further sought to be supported on the ground that it did not rest on a formal finding that the execution of the 1954 agreement constituted an unfair labor practice. The Court of Appeals, while stating that the Board could not draw "any legal conclusion with regard to events outside the statutory period," distinguished the decision here as resting on the "mere existence

¹³ We think the rule in conspiracy cases, where the statute of limitations only begins to run upon the commission of the last overt act in furtherance thereof, does not furnish a useful analogy in this case. The statute in question here bars issuance of a complaint "based upon any unfair labor practice" which occurred more than six months prior to the filing of the charge; it does not merely bar proceedings against an unfair labor practice which are not commenced within six months after that unfair labor practice has been committed. Cf. 18 U. S. C. § 3282. Our conclusion that the complaint giving rise to the judgment under review is of necessity "based upon" the unfair labor practice of execution of the agreement, and is barred by time, has drawn on this statute's purpose and history, and we do not assert the universal applicability of our resolution of the particular question presented for decision. In any event, the commission of an overt act pursuant to a conspiratorial agreement represents a renewed affirmation of the unlawful purpose of the conspiracy. The acts constituting enforcement of a collective bargaining agreement cannot well be so characterized. Beyond that, one may question the appropriateness of analogizing this situation, where proper application of a particular statute of limitations involves taking into account competing values, to one which involves an unlawful agreement of a kind unreservedly condemned, and the entire undoing of which is the undiluted purpose of the criminal law. Indeed, the rule advanced in dissent cannot be squared with the Board's own approach to the statute. See the cases discussed in notes 12 and 13, *ante*.

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[of the facts surrounding the making of the 1954 contract], rather than on ascribing legal significance to those facts standing alone." 264 F. 2d, at 581 (emphasis by the court). This distinction sacrifices the policy of the Act to procedural formalities. If, as is not disputable, the § 10 (b) limitation was prompted by "complaint that people were being brought to book upon stale charges," *Labor Board v. Pennwoven, Inc.*, 194 F. 2d 521, 524, it is a particular use of the prelimitations facts or conduct at which the section is aimed, and it can hardly be thought relevant that the proscribed use has not been labeled as such. The applicability of the policy of § 10 (b) in the *Grain Millers* case, *supra*, where in the particular circumstances of that case, and not because of anything arising from § 10 (b), the challenged acts within the limitations period could not be condemned as unlawful without an express declaration that earlier conduct constituted an unfair labor practice (see note 12, *ante*), was not greater than it is here, where although there was no "finding" that execution of the agreement constituted an unfair labor practice, it is manifest that were that not in fact the case enforcement of the agreement would carry no taint of illegality. The availability of the repose sought to be assured by § 10 (b) cannot turn on the vagaries of any such hypertechnical distinctions, bearing no relation to the purpose of the legislation.

It is apparently not disputed that the Board's position would withdraw virtually all limitations protection from collective bargaining agreements attacked on the ground asserted here. For, once the principle on which the decision below rests is accepted, so long as the contract—or any renewal thereof—is still in effect, the six-month period does not even begin to run. Cf. *Bowen Products Corp.*, *supra*, at 732. In *Lively Photos, Inc.*, 123 N. L. R. B. — (No. 126), the Board unhesitatingly applied the doctrine of the case at bar to an attack upon

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an agreement executed more than three and one-half years prior to the filing of the charge. The cease-and-desist order entered in that case directed the severance of a bargaining relationship which had been initiated five years earlier. A doctrine which does such disservice to stability of bargaining relationships could be upheld, in light of the language and evident purpose of § 10 (b), only by a convincing showing that Congress did not intend that provision to be applied so as to bar attacks on collective agreements with unions lacking majority status unless brought within six months of their execution. Far from providing such a showing, the legislative history contains affirmative evidence that Congress was specifically advertent to the problem of agreements with minority unions, had previously been at pains to protect such agreements from belated attack, and manifested an intention, in enacting § 10 (b), not to withdraw that protection.

Four years prior to the enactment of the Taft-Hartley amendments, of which the § 10 (b) limitations proviso was one, Congress barred the Board from proceeding, under certain conditions not here relevant, in cases "arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed." National Labor Relations Board Appropriations Act, 1944, 57 Stat. 515. This legislation was enacted with specific reference to agreements with minority unions,¹⁶ and was re-enacted in each

¹⁶ The immediate impetus to the legislation was the pendency of an N. L. R. B. proceeding involving a closed-shop agreement in effect at the Kaiser shipbuilding yards at Portland, Oregon. The agreement, though executed at a time when only 66 workers were employed, was being applied to a 20,000-man work force. The debates show that the issue of representation by minority unions was in the forefront of legislative concern. See 89 Cong. Rec. 6950 (remarks of Reps. Smith and Tarver), 6953 (Rep. Tarver), 7029 (Sens. Truman and Ball), 7031-7032 (Sen. Wagner).

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succeeding session through 1947.¹⁷ At the time the Senate Committee on Labor and Public Welfare reported S. 1126 (the Senate version of the proposed legislation enacted as the Labor Management Relations Act, 1947), a rider to the appropriations bill for the fiscal year 1948 (H. R. 2700, 80th Cong., 1st Sess.) was pending before the Senate Appropriations Committee, having been previously reported by the House Appropriations Committee in language identical with that of its predecessors. The Labor Committee's discussion of the proposed § 10 (b) amendment is illuminating:

"The principal substantive change in this section is a provision for a 6-month period of limitations upon the filing of charges. The Board itself by adopting a doctrine of laches has to some extent discouraged dilatory filing of charges, and a rider to the current appropriations bill (*which if this amendment was adopted would no longer be necessary*) contains a 3-month period of limitations with respect to certain kinds of unfair labor practices." S. Rep. No. 405, 80th Cong., 1st Sess., p. 26. (Emphasis added.)

This language cannot be squared with an interpretation of § 10 (b) which would ascribe to Congress, in enacting for the first time a general limitations provision, a purpose to eliminate the then-existing all-embracing limitation specifically applicable to agreements with minority unions.¹⁸

¹⁷ The National Labor Relations Board Appropriations Act, 1945, 58 Stat. 568, made several amendments in the limitations provisions, the principal of which were designed to render the rider inapplicable to agreements with company-dominated unions, and to provide an additional three-month period at the commencement of any renewal of an agreement in which a complaint could be filed. See 9 N. L. R. B. Ann. Rep. (1944), pp. 5-6. Subsequent re-enactments were without relevant change. 59 Stat. 378, 60 Stat. 698.

¹⁸ This conclusion seems to us not vitiated by the fact that the Senate Appropriations Committee, subsequent to the issuance of the

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In sustaining the Board's position, the Court of Appeals also relied on the public character of the right sought to be vindicated by the Board, and the limited scope of judicial review of Board determinations. Observing that "in interpreting, applying and administering a statute of limitations prescribed by Congress in this context [the field of labor relations], the Board—and the courts—are not confronted by precisely the same considerations as apply to statutes of limitations affecting the private rights of two individual litigants," the Court reasoned that "the Board may have thought that the interests of [employee] self determination outweighed otherwise important competing considerations of burying stale disputes." 264 F. 2d. at 581-582. We think this analysis inadmissible here, for the reason that the accommodation between these competing factors has already been made by Congress. It is a commonplace, but one too easily lost sight of, that labor legislation traditionally entails the adjustment and compromise of competing interests which in the abstract or from a purely partisan point of view may seem irreconcilable. The "policy of the Act"

Labor Committee Report, amended the appropriations rider in a manner perhaps susceptible of an interpretation which would render it inapplicable to agreements with minority unions. S. Rep. No. 146, 80th Cong., 1st Sess., pp. 6, 13. Nor is it sufficient to attempt to explain away the language of the Committee Report by reliance on the fact that, while the appropriations riders immunized agreements invalid on their face as well as those invalid for lack of majority status, see 8 N. L. R. B. Ann. Rep. (1943), pp. 7-8, § 10 (b) is more narrowly framed, and concededly does not protect an agreement invalid on its face from attack six months after its execution. Under the broad union security proviso to § 8 (3) of the original Act, 49 Stat. 452, invalidity of an agreement on its face was not a common problem, and we should not have expected Congressional discussion to have been primarily concerned with it. As we have seen, however, agreements with minority unions were specifically the focus of Congressional attention in this period, and the direct relevance of the Committee's discussion to the history of that problem is evident.

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is embodied in the totality of that adjustment, and not necessarily in any single demand which may have figured, however weightily, in it. Cf. Note 7, *ante*. It may be asserted, without fear of contradiction, that the interest in employee freedom of choice is one of those given large recognition by the Act as amended. But neither can one disregard the interest in "industrial peace which it is the over-all purpose of the Act to secure." *Labor Board v. Childs Co.*, 195 F. 2d 617, 621-622 (concurring opinion of L. Hand, J.). Cf. *Colgate Co. v. Labor Board*, 338 U. S. 355, 362-363. As expositor of the national interest, Congress, in the judgment that a six-month limitations period did "not seem unreasonable," H. R. Rep. No. 245, 80th Cong., 1st Sess., p. 40, barred the Board from dealing with past conduct after that period had run, even at the expense of the vindication of statutory rights." "It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. That policy cannot be defeated by the Board's policy" *Colgate Co. v. Labor Board*, *supra*, at 363. Cf. *Southern S. S. Co. v. Labor Board*, 316 U. S. 31, 47.

Reversed.

¹⁹Adoption of a six-month period of limitations, criticized by opponents of the legislation as "the shortest statute of limitations known to the law," S. Rep. No. 105 (pt. II), 80th Cong., 1st Sess., p. 5 (Minority Report), was resisted on the ground that it gave "unjust assistance to employers or unions which commit those types of practices which are easily concealed and difficult to detect." 93 Cong. Rec. 4905 (remarks of Sen. Murray).

It need hardly be pointed out that we are not dealing with a case of fraudulent concealment alleged to toll the statute. See 264 F. 2d, at 583 (dissenting opinion).

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1959.

Local Lodge No. 1424, etc., et al.,
Petitioners,

v.

National Labor Relations Board.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Co-
lumbia Circuit.

[April 25, 1960.]

MR. JUSTICE FRANKFURTER, dissenting.

While agreeing with my Brother WHITTAKER's grounds for dissenting, I should like to add confirming considerations for his conclusion. At a time when the union did not represent a majority of employees, union and employer entered into a collective bargaining agreement, containing a "union security" clause compelling all employees to become members of the union. Under principles accepted by the Court, this constituted an "unfair labor practice," for it tended "to restrain or coerce employees" in the exercise of their right "to bargain collectively through representatives of their own choosing." Union and employer continued to carry out the terms of this illicit agreement. Specifically, the union acted as the unauthorized bargaining agent, union dues were collected through a "check-off" by the employer, and employees were compelled to become members of the union within forty-five days. The Court's opinion recognizes that all this constituted continuing interference with the employees' free choice and was therefore a continuing unfair labor practice.

Ten months after the collective agreement was first entered into, but while its terms continued to be actively carried out, an unfair labor practice charge against the union and employer was filed with the Board. Plainly,

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the continuing unfair labor practice of maintaining the collective agreement illegally entered into did occur within six months of the filing of the charge. The Court accepts this as true. But the Court holds that a charge based upon that continuing unfair practice is time-barred.

The applicable statute of limitations provides: "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." The Court relies on the fact that the active carrying out of the agreement, concededly an unfair practice occurring within six months, is revealed as unlawful only by reason of the unlawful character of the agreement at its inception, specifically, the fact that the union did not represent a majority of employees at that time. The Court concludes that the action is barred because the inception of the unlawful agreement was outside of the statutory period.

Such an interpretation, I respectfully submit, is not to enforce congressional legislation, which is our task, but is to fashion linguistic legislation and then apply it. Instead of barring only those complaints "based upon any unfair labor practice occurring more than six months prior to the filing of the charge," the statute is made to read "based upon any unfair labor practice *having had its inception* more than six months prior to the filing of the charge." Thus the complaint is held barred, even though an unfair practice did occur, with due regard to the thought conveyed by that word. That is, we have here not mere inert continuity of consequences through antecedent action; events were brought to pass through conscious human intervention within six months of the filing of the charge.

I see no justification for such rewriting of what Congress wrote. The legislative history recited by the Court makes no such demand. Congress no doubt wanted to put stale claims to rest, and it did so by a relatively short

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statute of limitations for permitting claims to be brought to litigation. If six months are allowed to pass by without a charge against an unfair labor practice being filed, Congress said that is an end of the matter, and a charge cannot be filed thereafter. But Congress did not say that if a charge is filed within six months of the occurrence of an unfair practice, that cannot be halted, that cannot be proceeded against, if such labor practice had its inception more than six months before. On the contrary, what I deem a controlling analogy leads me to apply the statute as I find it, and to bar complaints only when based upon active occurrences not falling within the six-month period. I find that analogy in the treatment of the same kind of problem in cases where a conspiracy is entered into before a statutory period but is actively kept alive within that period.

The essence of the unfair labor practice involved in this case is the making and maintaining of an illegal agreement between union and employee. Suppose that Congress, having defined such an agreement to be an unfair labor practice, had subjected it not only to civil remedies but had also made it a misdemeanor. That is by no means a fanciful supposition. The federal anti-trust statutes are a prominent instance of the use of the criminal law, and in particular the law of conspiracy, as part of a scheme of industrial regulation. Suppose a six-month statutory limitations period for the criminal charge, as we now have for the civil, and suppose the very facts of this case. Specifically, suppose it had been charged that during the prior six months, by maintaining their collective agreement, entered into when the union did not represent a majority of employees, the union and employer had conspired to deprive employees of their rights freely to choose bargaining representatives, and that during those six months overt acts had been committed in pursuance of the unlawful agreement.

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To find a cognate statute of limitations to be a bar to such a case would be to ignore the applicable precedents. The rules set out by this Court for applying statutes of limitations to conspiracy cases are clearly otherwise. See *United States v. Kissel*, 218 U. S. 601; *Hyde v. United States*, 225 U. S. 347, 367-370; *Brown v. Elliott*, 225 U. S. 392, 400-401; *Fiswick v. United States*, 329 U. S. 211, 216; *Grunewald v. United States*, 353 U. S. 391, 396-397. "The statute of limitations, unless suspended, runs from the last overt act during the existence of the conspiracy." *Fiswick v. United States*, *supra*, at 216. And these cases show that this principle applies even when, as here, the overt acts within the statutory period derive their illegal significance only when interpreted in light of an illegal agreement which was initiated prior to the statutory period for bringing a charge. Certainly, the illegalities committed within the six-months period in this case, to the same degree as overt acts in pursuance of a conspiracy already formed, represent "a renewed affirmation of unlawful purpose," expressed in an agreement which Congress has outlawed as an unfair labor practice. A conspiracy is kept alive by an overt act within the period of the statute of limitations not by reason of some dogmatic postulate relevant to conspiracies, but as a result of judicial reasoning in applying statutes of limitations. This reasoning is equally applicable to the matter in hand.

I'm baffled to understand why the present case should be different from what it would be were it a prosecution for criminal conspiracy, rather than a civil proceeding based on an agreement giving rise to an unfair labor practice.

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1959.

Local Lodge No. 1424, etc., et al.,
Petitioners,

v.

National Labor Relations Board.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Co-
lumbia Circuit.

[April 25, 1960.]

MR. JUSTICE WHITTAKER, with whom MR. JUSTICE FRANKFURTER joins, dissenting.

The Court correctly recognizes (1) that it is violative of employees' rights guaranteed by § 7, and an unfair labor practice by an employer under § 8 (a) and by a labor union under § 8 (b), of the National Labor Relations Act, for an employer and a labor union to enter into a contract providing either for the recognition by the employer of the union as the representative of its employees or that its employees must become and remain members of the union, unless the union, at that time, represented a majority of the employees in the unit, (2) that "The maintaining of such an agreement in force is a continuing violation of the Act," and (3) that the bargaining contract involved in this case both recognized the union as the exclusive bargaining representative of the employees and required them to become and remain members of the union, although the union did not then represent a majority of the employees in the unit.*

Despite the foregoing, the Court holds, I think, with deference, quite inconsistently and erroneously, that § 10 (b) of the Act barred the issuance of a complaint,

*In fact, the undisputed testimony was that the union did not then represent a single one of the employees, and that the employer acceded to the union's demand for recognition and entered into the contract simply because the union had it "over a barrel."

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upon an employee's charge filed with and served by the Board 10 months after the making of the contract, based not upon the making of the contract, but alleging that, within and throughout the period of six months preceding the filing and service of the charge, the employer and the union required the employees to become and remain members of the union, and, once in each of those six months, caused certain sums to be deducted from the employees' wages and paid over to the union, all without the authorization of the employees.

The Court, noting the employer-union contention that the contract was "tainted" only by its "unlawful execution," and that "since a complaint based upon *that* unfair labor practice [would be] barred" by § 10 (b), *that event* could not be utilized "to *infuse with illegality the otherwise legal union security clause or its enforcement.*" adopts that argument as presenting the "correct view." (Emphasis added.)

Surely the fact that a prosecution for the *making* of a "tainted" contract is barred by limitations does not "infuse" the "tainted" contract with *legality*. Moreover, I respectfully submit that the complaint here was not based upon the "tainted" contract, and that its unlawful *execution* was not utilized "to infuse the [always illegal] contract with illegality." Rather, the complaint here was based upon, and limited to independent acts of the employer and the union, committed within six months preceding the filing and service of the charge, that deprived the employees of rights guaranteed to them by § 7, resulting in unfair labor practices under § 8; and the fact that prosecution for the illegal *execution* of the "tainted" contract is time-barred, as an independent wrong, may not be utilized "to infuse with" *legality* the illegal "union security clause or its enforcement."

It is important carefully to note what it is that § 10-(b) bars. It says, in relevant part, that "*no complaint shall*

issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge. . . . (Emphasis added.) The bar is, then, against the issuance of a "complaint," that is "based upon" acts "occurring more" than six months prior to the filing of the charge. In the plainest possible sense, then, it does not bar the *issuance of a complaint based upon acts occurring within six months of the filing of the charge.* The complaint that was issued here was based upon acts occurring within six months of the filing of the charge. And the Board rested its decision solely on those acts.

But the Court holds that, although § 10 (b) is only a statute of limitations, evidence of the illegality of the contract is inadmissible, in the circumstances of this case, because it would serve "to cloak with illegality that which was otherwise lawful," and would permit a time-barred event "to be so used [as to revive] a legally defunct unfair labor practice." This conclusion gives ~~hip~~ heed rather than heed to the conceded rule that "the maintenance of such an agreement in force is a continuing violation of the Act," for it makes incompetent all relevant evidence that may be adduced to prove the "continuing violation." Moreover, such a rule is contrary to the decisions of this Court and to every decision of the Courts of Appeals upon the point to which our attention has been directed.

In *Federal Trade Comm'n. v. Cement Institute*, 333 U. S. 683, this Court held it to be:

"well within the established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis of a suit, may, nevertheless, be introduced if it tends reasonable to show the purpose and character of the particular transaction under scrutiny. *Standard Oil Co. v. United States*, 221 U. S. 1, 46-67; *United States v. Reading Co.*, 253 U. S. 26, 43-44." 333 U. S., at 705.

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To the same effect, but directly dealing with unfair labor practices, are *Paramount Cap Mfg. Co. v. Labor Board*, 260 F. 2d 109, 112-113 (C. A. 8th Cir.); *Labor Board v. Gaynor News Co.*, 197 F. 2d 719, 722 (C. A. 2d Cir.), *aff'd sub nom., Radio Officers v. Labor Board*, 347 U. S. 17; *Katz v. Labor Board*, 196 F. 2d 411, 415 (C. A. 9th Cir.); *Labor Board v. General Shoe Corp.*, 192 F. 2d 504, 507 (C. A. 6th Cir.); *Labor Board v. Clausen*, 180 F. 2d 439, 443 (C. A. 3d Cir.); *Superior Engraving Co. v. Labor Board*, 183 F. 2d 783, 791 (C. A. 7th Cir.).

In the *Katz* case, almost identical with this one on the point in issue, the Court specifically rejected the contention that, inasmuch as more than six months had expired from the date of the execution of the tainted contract, the complaint, based upon acts occurring within six months of the charge, was barred by § 10 (b), saying:

"While . . . the mere execution of the agreement on December 17, 1948, constituted an unfair labor practice, there is no doubt but that the continuous enforcement of the agreement thereafter within the six months period prior to the filing of the charge, was an unfair labor practice, and with respect to this continued and continuous enforcement of the illegal union shop agreement, the prosecution of the proceeding was not barred by limitations." 196 F. 2d, at 415.

In the *Gaynor* case, the Court, after pointing out that although the tainted contract had been executed more than six months prior to the filing of the charge, and its execution was therefore barred as an independent subject of punishment by § 10 (b), observed that enforcement of the contract was "a continuing offense," and held that the complaint, based only on acts occurring within six months

of the filing of the charge, was lawfully issued and "in all respects valid." 197 F. 2d, at 722.

Although still recognizing that enforcement of a tainted labor contract "is a continuing violation" of the law, the Court further says that this is true "solely by reason of circumstances existing only at the date of execution"; and it therefore concludes that evidence of the taint is inadmissible in a proceeding to punish unlawful conduct occurring from enforcement of the contract within six months of the filing of a charge. I respectfully submit it is plain that this reasoning negates the conceded rule that enforcement of a tainted contract is "a continuing offense." The Court's reasoning, inconsistently, would at once both recognize, and deny any means of proving, the "continuing offense."

Analytical curiosity provokes the query whether such an *illegal* contract, openly posted in the plant but not made effective in practice until the first day of the seventh month, would then become so "infused" with *legality* as to be unassailable by the employees—not because its enforcement is not "a continuing offense," but, rather, because, under the Court's rule, there can be no competent evidence of its illegality. If so, the rule of "continuing offense" is utterly destroyed. If not, the Court's rule that there can be no competent evidence of the continuing violation must give way. The two theories are diametrically opposed and self-destructive. Section 10 (b) does not at all deal with the competency or admissibility of evidence. Surely, as the cited cases hold, any evidence which shows that continuing enforcement of the contract is or is not an offense under the Act is competent under the law.

But there is even a more fundamental consideration which, for me, settles this issue beyond all controversy. While it is the burden of the General Counsel of the Board

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to prove his case, all he need do, initially at least, is to make a prima facie case. He may do this, in a case like the present, simply by putting on evidence showing that the employer and the union, within six months preceding the filing of the charge, required the employees to become and remain members of the union and to submit to deduction of dues from their wages without asking them for authorization and without any election, or Board certification of the union. That evidence alone would raise prima facie the issue: By what right was this done? That issue would call for a defense, and the burden of producing the defense would necessarily fall upon the employer and the union. Surely it will not be said that anything in § 10 (b), or elsewhere in the law, makes incompetent all evidence that might be adduced by the employer and the union to meet their burden and justify their action. If, as I submit cannot be denied, such evidence is competent when offered by the employer and the union, it must likewise be competent when, if he so elects, it is offered by the General Counsel of the Board. Here, at the very least, the General Counsel made a prima facie case of continuing violations of the law within the six months preceding the filing of the charge; the employer and the union made no effort to show the legality of their conduct in the period complained of.

The Court attributes to its rule the virtues of quieting "stale claims" and of "stabilizing existing bargaining relationships." I cannot agree that it would do either, for employee rights, occurring within six months of the filing of the charge are not "stale claims," and deprivation of those rights which, as the Court of Appeals said, "rankles at least once a month in the minds of [the employees] offended," is not conducive to industrial peace and would not—certainly not legally—"stabilize existing bargaining relationships." At all events, and however this may be, these matters were for Congress; and the cardinal pur-

poses of the National Labor Relations Act, contained in § 7, were to guarantee to employees the right to join or assist labor organizations "of their own choosing" or to refrain from such activities. Surely, the continuing offense of enforcing a contract, made by an employer with a union which was not of the employees' "own choosing," was not intended by Congress to be left without a remedy. Congress did not intend to create and "to hold out to [employees] an illusory right for which it was denying them a remedy." *Graham v. Brotherhood of Firemen*, 338 U. S. 232, 240. Certainly, "any limitation on the employees' right[s] under §§ 7 and 8 . . . must be more explicit and clear than it is here in order to restrict them at the very time they may be most needed." *Mastro Plastics Corp. v. Labor Board*, 350 U. S. 270, 287. See also *Labor Board v. Lion Oil Co.*, 352 U. S. 282, 289.

Believing that the Board and the Court of Appeals correctly decided this case, I would affirm the judgment.